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The Trial of D. A. McDougald for the Murder of Simeon Conoley, at Fayetteville, N. C.

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—BY—

Z. W. WHITEHEAD AND HAMILTON McMILLAN.

Walter Watson

MANUFACTURER OF

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TOOLS

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Fayetteville, N. C.

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History of the Murder of Simeon Conoley.

On the eventful night of April 21st, 1891, when "darkness was upon the face of the deep," and the shades of evening had fallen thick and fast hither and thither, Simeon Conoley, an aged, honorable and highly esteemed citizen of Robeson County, while resting "under his own vine and fig tree" from the exertions and fatigue of a day's laborious toil was decoyed from the sacred precincts of his family fireside to an open field but a few hundred yards distant, and there most brutally assassinated, by a man giving his name as Lum Johnson, wearing a long duster and an old hat, whom Mr. Conoley, in the goodness of his heart, had kindly proffered to show the way to the house of a Mr. Wilkes, about a quarter of a mile off, in response to the stranger's inquiries for Mr. Wilkes's place of residence. Leaving the house together, and going in the direction of Mr. Wilkes's, they had been gone but a few minutes when two pistol-shots rang out in rapid succession. There being nothing unusual in firing off pistols and guns in the neighborhood after nightfall, the reports excited little or no suspicion with even the immediate members of the family, and nothing was known of this heinous crime until next morning, when the lifeless body of Simeon Conoley—cold in death, and pierced through the head with two bullets from a 38-calibre pistol—was found by the roadside. From family to friend and neighbor the news spread like wildfire, indignation on the part of the people keeping pace with the rapid dissemination of the shocking news, and gathering in volume as the bloody tragedy was told and repeated. Being a quiet, inoffensive citizen, and almost without an enemy in the known world, everyone appeared at a loss to conjecture the motive of the murder, or to whom to assign the dastardly deed. In due time the coroner was called in to perform his official duties, and, after a patient hearing of all the evidence adduced, and a careful investigation of the circumstances surrounding the murder, the jury of inquest rendered a verdict that "Simeon Conoley came to his death by two pistol-shots through the head, from a 38-calibre pistol in the hands of an unknown man calling himself Lum Johnson."

An indignant and outraged community, and the friends of the deceased, individually and collectively, addressed themselves to the arduous task of ferreting out the guilty man. For the time being the whole thing appeared to have been enveloped within the folds of a profound mystery, apparently as impenetrable as walls of adamant. Soon, however, two or three suspicious characters were arrested and taken before justices of the peace at Mill Prong or elsewhere, all of whom, however, at the crucial test, succeeded in proving an *alibi*, or their whereabouts on that eventful night of April 21st, and were accordingly discharged for the want of evidence to the contrary. For awhile things and events "pursued the even tenor of their way," and it seemed as though the cowardly assassin of Simeon Conoley had succeeded well in covering up his tracks, and that this foul act must remain for all time to come a mystery. But "murder will out" is an old adage as ancient as the hills and true as Holy Writ, and after the lapse of a few days it leaked out that a negro saw D. A. McDougald, of Laurinburg, or some one closely resembling him, washing in Lumber river, fifteen miles away, early one morning about the time of the murder, who, becoming frightened at the negro's

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appearance, ran away, leaving the clothes by the river-side. As to who the party was at first became a matter of some doubt, and no one could hardly be found who would dare say Dan. McDougald was a murderer, particularly since he displayed so much anxiety and interest at his uncle's burial to ferret out the guilty party or parties, being the man to throw the first shovel of dirt on his uncle's coffin. Suppositions developed into, apparently, realities, and circumstances and suspicions only tended to form a practically unbroken chain of evidence that McDougald was the murderer of his uncle, Simeon Conoley. The report rapidly gained currency throughout the entire section, and it soon became evident that he would be called to account for his whereabouts on the night of April 21st, '91. Threats of lynching were now and then heard, and on or about May 1st a warrant was issued for McDougald's arrest; the officers went in pursuit of him, but found him not, for, hearing of what was "in the wind," he succeeded in getting the clothes from Campbell s Bridge the day before, on Tuesday, and on the following Friday boarded the Charlotte-bound train on the Carolina Central Railroad at a water-tank about three hundred yards above the depot at Laurinburg, for Charlotte; thence he went to Greensboro, Lynchburg, Louisville, Ky., and Kansas City, Mo., continuing his flight to the remote parts of Oregon, where he secured work on a railroad, and went under the name of D. H. Laurin. His flight was taken as *prima facie* evidence of his guilt; whereupon the County of Robeson and State of North Carolina offered rewards amounting, in round numbers, to nearly one thousand dollars. A Pinkerton detective was soon put on his track, who, after remaining in the vicinity a short while, watching the mails, &c , had his man spotted inside of thirty days, whom he went in search of, and found to be D. A. McDougald. In the meantime, the grand jury of Robeson County had indicted McDougald for murder. At the October term of Robeson Superior Court he was arraigned, and pleaded "not guilty;" and, upon an affidavit that he could not get a fair and impartial trial in that county, Judge McIver ordered the case removed to Cumberland.

The array of counsel on both sides was large, and embraced some of the best legal talent in North Carolina, as the proceedings further on will show. For the defence there were Maj. John D. Shaw, of Rockingham, Col. W. F. French and Capt. W. S. Norment, of Lumberton, John D. Shaw, Jr., of Laurinburg, Hon. Jas. C. MacRae and John G. Shaw, of Fayetteville, while the State was ably represented by Solicitor Frank McNeill, of Rockingham, Neill Archie McLean and Hon. Alfred Rowland, of Lumberton, and W. H. Neal, Esq., of Laurinburg.

THE TRIAL OF D. A. McDOUGALD

FOR THE

MURDER OF SIMEON CONOLEY.

Promptly at 10 o'clock on Wednesday morning of the November term of Cumberland Superior Court, his Honor Judge James D. McIver presiding, the case of D. A. McDougald for the murder of his uncle, Simeon Conoley, was taken up, and the following jury impanneled:

G. F. Talbot, John Roddick, George A. O'Hanlon, D. K. McNeill, S. P. Denning, D. A. Geddie, Bunyan Hales, G. S. Gibson, J. A. Wade, R. A. Godwin, Thos. Lewis, A. D. McNeill.

After the administration of the oath to the jurors, and the arrangement of certain other preliminaries, witnesses were sworn in, and the testimony commenced as follows:

EVIDENCE.

WEDNESDAY — AFTERNOON SESSION.

DR. R. F. LEWIS was the first witness called, who testified that he knew Simeon Conoley, and last saw him at his mother's home, dead, on the morning of April 22nd; said that he was a practicing physician, graduated in medicine in 1859; was a member of the State Medical Society; had examined the body of Conoley, and found that two pistol-balls had been shot through his head, one ball entering just above the right ear, and the other over the left temple, causing death; said that the balls were of the size of 38-calibre; that one of the balls lodged in Conoley's hat, but neither was badly battered; that the balls were handed him by a young Mr. Conoley; that he saw the corpse for the first time at the house to which it had been removed.

Upon cross-examination, Dr. Lewis said he examined the body of Conoley on the 22nd day of April last, but that the killing had been done on the night of the 21st.

A. J. COTTINGHAM was next introduced. Said he knew McDougald; saw him on April 21st last on freight train, with himself and others, from Laurinburg to Maxton, at which place they got off; had duster and black satchel.

Cross-examined: Witness said he was certain the satchel was black, and that he had a duster; that among the parties he remembered on the train from Laurinburg to Maxton were Mr. McNair and Conductor Burnett; to the best of his recollection McDougald wore his duster on the train; that he got off at Maxton on Tuesday morning about 7 o'clock; recollected distinctly that McDougald did not wear whiskers, only moustache; that it was three or four days after this had happened before he heard that he was charged with the murder; that he was dressed in a black suit, and got off the train at Maxton on the morning of April 21st.

The next witness was LUTHER MCCORMICK, who testified that he had known McDougald for nearly twenty

years; saw him on the morning of April 21st last, at Maxton, upon arrival of train from Laurinburg; shook hands with him, and invited him up to his house; was close-shaved, except moustache; that he (McCormick) kept hotel in Maxton, and usually met all trains; that McDougald said he wanted to get off on Fayetteville train; had a duster on arm, and black satchel, and two or three bundles tied up in a newspaper; wanted to leave bundles in McCormick's office, but was advised to leave them with the agent of the railroad. Witness further testified that at this juncture they separated, going in opposite directions; saw McDougald next on April 22nd, about 11 o'clock, sitting on engine of Maxton, Little Rock & Alma Railroad, and again in front of Croom's drug-store.

Upon cross-examination witness said: I live in Maxton, and keep hotel on Fayetteville side of C. C. R. R.; saw McDougald, as above stated, soon after arrival of C. C. train from Laurinburg, and talked with him; McDougald had moustache; said he wanted to get off on Fayetteville train; he had a satchel and duster and two or three bundles; was positive he had two, and thought he had three; was certain he saw McDougald on the 21st and 22nd of April last; that he was on the Maxton, Little Rock & Alma R. R. engine on 22nd; thought Mr. Wicker, the engineer, was in the cab with him; did not see any bundles, and did not shake hands with him at that place.

E. H. Cole examined: Am section-master on Cape Fear & Yadkin Valley Railway. April 21st was at tank about 400 yards above the crossing; was there when the train passed; saw a man at the tank, did not know him (asked if prisoner at the bar was the man; question objected to); has an opinion about the matter; thinks it was the defendant; the man asked witness what time the Fayetteville train passed; wanted to know if it would stop at the tank long enough for him to get aboard; witness asked his name—replied it was McDougald, lived at or near Laurinburg; asked if he was a relative of Capt. McDougald, of Cumberland; he replied "No;" witness thought the man had a duster, valise and bundle; the man went off towards the tank; saw him no more.

Cross-examined: Could not swear now that prisoner was that man; first saw him coming from direction of Cape Fear and Yadkin Valley R. R.

Thos. Smith examined: Is employed by section-master Cole; was with him at the tank when he had a conversation with McDougald; know that it was before Conoley was killed; McDougald boarded the train for Fayetteville at the water-tank; had a duster and possibly an overcoat.

Cross-examined: Could not swear exactly what day this was; the man had an oil-cloth coat and duster; was a spare-made man, with only a moustache—don't know the color; had on a black suit.

T. E. Phillips examined: Has known McDougald for several years; saw him in Maxton the day Conoley was killed, at the water-tank; had a mud-colored duster and what he supposed to be a valise; had only a moustache.

Cross-examined: Thinks he has known McDougald six or seven years; got to water-tank early in the morning; saw McDougald; said "Hallo, Mack! what are you doing here?" Mack replied: "I am going down the road." Had a valise of medium size, with duster lying across it; left McDougald sitting at tank; witness was on an extra, distributing cars; saw McDougald again on freight train, about 10 o'clock, when it overtook witness's train at Red Springs; saw other passengers on the coach, but no one on the platform but McDougald. [This freight train has an accommodation car for local travel.—Reporter.]

W. O. Lockamy examined: Was conductor on freight, and took on a passenger at tank near Maxton, but told him he could get to Shandon on the mail train earlier, but the man said he was in no hurry; had some kind of bundle with a duster; said he was going to Shandon; had little to say, but looked down on the floor; witness heard of the murder of Conoley next day.

Cross-examined: Did not know McDougald; certain he paid fare to Shandon, but did not see him after he left Wakulla.

Lizzie McKay examined: Has known McDougald since a girl; saw him the morning before Conoley was killed, near the water-tank at Maxton, about 8 or 9 o'clock; never spoke to him, or saw what he carried. [Nothing new on cross-examination.]

SECOND DAY — MORNING SESSION.

CHARLOTTE DUMAS examined Lives in Richmond County; lived in Robeson when Conoley was killed; remembers the killing; lived in Shandon section-house; saw a strange man pass the house after the train arrived; had a white-looking duster and a grip-sack; went in direction of W. C. McPhail's; certain that Conoley was killed that night; thought, after the killing, of seeing the strange man pass.

Cross-examined: Never had seen the man before; no uncommon thing to see a stranger; had a whitish duster, with a grip-sack over his shoulder; was a fine-looking man; prisoner bowed; she returned the bow.

J. F. LYON examined: Live at Gibson Station; am a minister; know McDougald intimately; saw prisoner after the killing of Conoley; on the way to the District Sunday-school Convention at Rockingham saw McDougald in a rear car at Hamlet; went up, and, putting a hand on his shoulder, said: "Where are you running away to?" McDougald made no reply, but looked startled; I said: "I hope you are going to Rockingham to help sing;" had conversation about his uncle's death—about the tracks seen in the garden back of Conoley's house; asked if none of the family saw the man who called his uncle out that night; McDougald replied that his aunt and a little boy saw the man; he then told about the position the body was found in; I asked if the family was not alarmed at the pistol shots; he replied that they were not specially uneasy when Conoley failed to return; they retired as though nothing had happened; said he suspected Millard Moore as the murderer, and to the question of Sheriff Livingston (who was on the car) why Moore was suspected, he said that Moore wanted Conoley out of the way on account of land troubles; never saw McDougald again after getting off at Rockingham; knew that McDougald had fled the country; McDougald had not shaved for several days; had only a moustache; never wore anything else. [Cross-examination failed to weaken this testimony.]

W. C. MCPHAIL examined: Lives at Shandon; remembers the day Conoley was killed; saw a man passing up the road after the freight train came in, with a long duster; did not recognize him; was thirty yards off; Shandon is the nearest depot to Conoley's—about eight miles off.

JEFF COBB examined: Am living a mile from Shandon; was at work near the public road April 21st; saw a man with a duster and packages about one o'clock; the man passed before he got in road.

FANNIE MEARES, colored: April 21st met a man below Cobb's. He was a curious-looking man, had a duster on and "toted" a valise; was awful black-looking; had long hair and moustache and side locks; his hair was straight; he said: "Good evening."

HENRY SMITH examined: Remembers when Conoley was killed; was at work on the road; saw a curious-looking man; had on long duster; was all blacked up, with white places on the hands and back of neck; never noticed whiskers—only a moustache; told Cobb I met the man; he looked as if painted. [Jeff Cobb was recalled to corroborate the above.]

MRS. HUMPHREY examined: Lives one-fourth of a mile from Mr. Cobb; saw a man pass on the road; a black-looking man; slight-built; duster and bundles tied up in oilcloth; did not speak, nor look up; thinks he had side-whiskers; had on green or blue glasses; face glistened; didn't look natural; had long hair; saw only his side-face.

NEILL SMITH examined: April 21st, the day of the murder, Calvin Conoley came to the gate with the mail at 2 o'clock; while they were talking a man passed; wore a long duster and had bundles; long hair; looked like a painted man; one side of his hat was pulled down; did not speak as he passed; knew McDougald at birth; had not seen him since he grew up; the man was about prisoner's size; wore spectacles and whiskers; he went in the direction of Conoley's; saw prisoner at funeral; did not talk with him then or since.

Cross-Examined—Had some peddlers in that section; did not look like a peddler; his hair, perhaps, reached his collar, but I thought it a wig. [Mrs. Humphrey recalled, and her evidence at Mill Prong read, where she said she took the man to be a negro.]

JOHN C. CONOLEY: The day Conley was killed saw a man at 2 or 3 o'clock; wore a duster, wide-brim hat, spectacles, and something strapped to his back, going in the direction of Conoley's; he asked how far it was to Fay-

etteville; was a black-looking, curious man; had side-whiskers. [Nothing new on cross-examination.]

SALLIE WILKES: On the day Conoley was killed saw a man pass an hour or two by sun; had on a duster with a strap across his back, and bundles, going in the direction of Conoley's. Saw the prisoner at Conoley's Wednesday night; heard him ask what time the murder was committed; said he knew Lum Johnson, but he was not the murderer, because Lum was at work; told of his trip to Wilmington; said the train left him at Maxton, where he stepped off, coming from Wilmington; testified to other conversation of McDougald, and said others heard the prisoner's statement about the trip to Wilmington; prisoner said he was on his feet all Tuesday night; defendant said he went that day to Alma with his mother and back to Laurinburg, and then came right on, as he had just heard of the killing of his uncle.

EDGAR GILLESPIE: Has known McDougald for five or six years; on April 22nd noticed man on the road who said he wanted to wash his face; when he pulled off his hat saw he was a white man; said he was up all night; he was Dan McDougald; this was three-fourths of a mile from Campbell's Bridge; heard that evening of the murder; the man had no spectacles or wig. When man first asked to wash his face witness gave him soiled towel, but afterwards got clean towel; when witness first saw man thought he was black, but on his approaching steps, and pulling off hat, saw that he was white man; on putting foot on steps man remarked that he was tired—been up all night; when man washed clean witness saw who it was. [To direct question, witness replied that the man was McDougald.] It was Wednesday after Conoley was killed night before.

Cross examined: Took no account of exact day of month—remembers that it was about planting-time; told Judd that he did not know who man was; told by counsel not to talk about matter.

HECTOR GILCHRIST: Heard of the murder; found clothes near Campbell's Bridge; found handkerchief with lampblack, undershirt and pants. Don't recollect what day he found the clothes.

W. H. HERRING: Knows McDougald; saw him April 22nd at night; saw him next day at Maxton, but was some time before he recognized him, as McDougald at the time looked seedy; had on a soft hat and duster, and had a black valise in hand; noticed lampblack places under the eyes and on his neck.

Cross-examined: Prisoner's shoes were muddy.

M. GREENWALD: Knew prisoner for fifteen years; the 22nd of April saw him at Maxton; both eyes were discolored; the rest of the face was unusually red.

J. C. ROBBINS: Known the prisoner for years; saw him April 22nd, and he asked for No. 9 slippers; prisoner said a man had died on his place; said some one had called him to the door and shot him, and gave the name of Lum Johnson; never said it was his uncle; prisoner bought of him wig and false whiskers before the murder of Conoley was ever committed.

FRIDAY—MORNING SESSION.

P. G. GRAHAM examined: Lives in Laurinburg; between March 17th and April 15th sold McDougald some lampblack, the latter saying that a friend of his at Rowland had written for it to black himself for a minstrel show; gave the name of the person as Charles Wicker.

Cross-examined—Is a druggist; keeps lamp black for sale; McDougald had acted as a negro in concerts at Mason's Crossing and Laurinburg; McDougald's character has been particularly good.

G. S. MCMILLAN examined: Lives at Laurinburg; has known the prisoner for fifteen or twenty years; saw McDougald next day after the murder of Conoley; came into McRae's office; complained of being tired; that he went to Wilmington the day before on the freight, and came back on the passenger train that night, remaining over night at Maxton, going down to Alma, and coming back to Laurinburg that day; [the day after Conoley was shot—Reporter] that he was worse than tired—one of his tenants had been called out and shot in the afternoon, that he had a note to that effect; two or three days after defendant gave the outline of the surroundings of the murder; thought there was a place in the field where the assassin might have stood;

that it was supposed that he went up to the well and called Conoley out, asking him to show him the way to Wilkes's house, and Conoley told him to wait until he got his shoes; never said who the tenant was who, he claimed, was shot; witness knew Lum Johnson, who worked on a freight train; defendant said thought murderer was white.

Cross-examined—Said up to this time defendant's character was exceptionally good.

GEORGE P. WELSH examined: Is passenger conductor on the Carolina Central R. R., and held that place in April last (gives schedule of trains at that time); did not see prisoner on the train from Wilmington on the night of the 21st of April; has known defendant six years.

Cross-examined—A special might have passed over the road of which he had no knowledge; defendant's character was splendid.

J. C. NEHEMEYER examined: I am an engineer on the C. C. Railroad; ran an engine with Capt. Welsh on the night of April 21st; have known McDougald for years; did not know he was on the train, but did not go through train to see who was aboard.

CAPT. EVERETT, of Laurinburg, testifies that defendant's character had been good.

JOHN WILKES examined: Live a quarter of a mile from Conoley's; on the night of the murder heard two pistol shots in the early part of the night; first knew of the murder at 9 o'clock next morning. (Witness testified to size and location of tracks.) Saw prisoner on Thursday, who remarked, on examining the tracks, that they were somewhat like his—No. 8; defendant arrived at Conoley's at 11 or 12 o'clock on Wednesday night; spoke of a trip to Wilmington, and of being tired; witness compared the track with the defendant's track, which measured about the same; his daughter told him about seeing a strange-looking man pass on Tuesday morning. Witness went out in field with defendant and his father, and caught defendant scraping his feet along to blot out tracks; witness told defendant not to destroy tracks, as they might enable some one else to discover the murderer.

Cross-examined—Said he had been approached by insurance men as to what he knew about the matter.

GEORGE BLUE examined: Found at Campbell's Bridge the morning after the murder pants, handkerchief, lampblack, an old hat and undershirt—the latter blacked on collar and sleeves; on Saturday morning prisoner asked to see clothes witness had found; looked at them, and told about the killing of his uncle.

CHAS. A. PURCELL examined: Met the prisoner on the last day of April; told witness about the stealing of his clothes from a buggy; in answer to question, witness said that he thought that parties were at his uncle John Conoley's after him; that his uncle John sent an escort with him two or three miles in the neighborhood; appeared much alarmed, and confessed that he had been much frightened at his uncle John's; defendant went in the direction of Gilchrist's Bridge; witness was a magistrate at the preliminary investigation at Mill Prong.

G. D. LIVINGSTON, deputy sheriff of Richmond county, testified about meeting defendant on the train on the 1st of May, talking about the murder, and asking defendant why he was not at the preliminary trial; said he was busy, and couldn't attend; spoke of a man calling himself Lum Johnson calling his uncle out and shooting him; had never had any warrant for the arrest of defendant; at the time of the conversation the prisoner had only a moustache.

C. A. PURCELL recalled: Said clothes were not produced at the investigation at either Mill Prong or Gilchrist's Bridge.

AFTERNOON SESSION.

R. M. MCNAIR examined: Saw McDougald board the train on the 1st of May 300 yards above the depot at Lauinburg; saw him no more till today; defendant's character was good.

D. P. JOHNSON examined: Have known prisoner since childhood; saw him on the road the day before he left the country; said he spent the night at his uncle John Conoley's, and the family was frightened at the action of people after him; said the clothes were stolen from his buggy.

W. J. CURRIE examined: Saw the clothes at Campbell's Bridge that day; the shirt was marked on the collar and cuffs; had seen prisoner wear similar clothes.

JAS. MCBRYDE examined: Saw the clothes at Campbell's Bridge April 22nd; noticed blacking on the collar; on the Friday following saw defendant on the train to Wilmington; spoke to him about the murder; said Conoley was his uncle, but was not communicative; defendant asked about public sentiment in witness's section; witness said Millard Moore was suspected; defendant concurred, and asked witness if he thought a man could be hung on circumstantial evidence; witness urged defendant to get the clothes, as they would form an important link in the testimony. Witness spoke of Hamilton McMillan, of Red Springs, staying at his house, and who promised to get all the evidence possible, and would see who had lampblack for sale at Red Springs; told defendant he would communicate with McMillan; got off at Lumberton; returned on train with defendant the same day; went to Laurinburg Sunday, in consequence of a letter from McMillan; defendant told witness Buie had sold the blacking, but people of Red Springs thought the murderer was Purnell, and were convinced that the man who went up on the freight Tuesday did the killing, and his name was Purnell, brother-in-law of Millard Moore; that defendant's father thought he had spotted the man, and was going out the next day to work the matter up; witness told him it might not be safe to needlessly expose himself.

J. J. MERCER: Lives at Laurinburg; heard of the murder April 25th; saw defendant on the train from Wilmington to Charlotte; last saw defendant April 24th.

D. C. ROPER: Live at Tatum's; received a letter or postal from McDougald; saw him at Phillips & McDougald's store, in regard to insurance.

E. F. MCRAE: Have known McDougald ten or twelve years; after the murder first saw the prisoner at Albany, Oregon; expressed his regrets at the defendant's situation; if he could explain his whereabouts the night of the murder all might be well; said that would be hard to do; he gave his account of leaving home: He spoke of the matter to his father—that McMillan told him if he didn't watch Millard Moore would fasten the crime on him; he thought he would leave, and get rid of the whole thing, and avoid a lawsuit. His father advised him not to leave. Then he concluded to go to Rockingham, then on to Charlotte, then concluded to leave the State; prisoner then described his trip out West to witness—remaining two weeks, and working one week, in Kansas City, then going on to Portland, Oregon, and finally to Albany. When arrested prisoner was going under name of D. H. McLaurin. [Nothing of importance on cross-examination.]

E. F. McRae is a prominent citizen, and went to Oregon for the prisoner.

SATURDAY—MORNING.

E. F. MCRAE'S examination continued: In Oregon, prisoner inquired about Millard Moore and Kelly; as to what had been done with them, etc. Had heard from home only through his brother, and had seen no paper but the *North Carolina Presbyterian*.

G. S. MCMILLAN testified as to defendant's handwriting.

DR. A. W. HAMER examined: Identified paper produced (application for insurance); saw Conoley sign the paper; never saw Conoley before September 12th, 1890; was introduced by D. A. McDougald; sent the policy to Roper, at Tatum's.

D. C. ROPER examined: Had conversation with McDougald in the summer of 1890 about a policy of insurance on Simeon Conoley, in favor of his sister, Margaret, for $5,000; in consequence of correspondence went to Laurinburg, met defendant, and talked of insurance; left Killabrew and McDougald together, and when he returned found part of the application written; a postal card was identified, reading as follows:

"LAURINBURG, N. C., Sept. 13, 1890.
DEAR SIR:—You can send me the policy, and I'll remit to you. Mr. Conoley arranged it with me to pay you, so you can send or bring it when you get it approved.
Very respectfully,
D. A. MCDOUGALD."

The policy was issued about ten days after medical examination; Killabrew delivered the policy to prisoner in his store, and received $239 on the same.

G. S. McMillan was recalled to make a point clear in identification of handwriting.

D. B. McLEAN: Received the letter through the mail in regular order.

Cross examined: Had conversation with defendant in relation to land and other things; there was a controversy between Simeon Conoley and Millard Moore; didn't know of Moore's shooting Lomax near Conoley's, on the disputed land; had only heard of it; there was bad feeling between Conoley and Moore, but it had been settled; after the letter introduced had been written Moore told witness the trouble had been bridged over.

J. A. CURRIE: Talked with defendant at Conoley's burial; defendant said he was worried—had been in Wilmington the day and night before the murder, and was at Conoley's the previous night; he concurred in the opinion of witness that it was the worst murder ever done in the county; said it was certainly premeditated; said that the Conoley place belonged to him, as he had taken up the mortgage of Mr. Thomson, in Fayetteville; defendant said he had heard that Conoley paid 1,500 pounds of lint cotton for the Carter place, but that the mules and guano were his that made the cotton; witness heard that the Conoley and Moore difficulty was adjusted.

Cross-examined: Mrs. Margaret Conoley had a child twelve or thirteen years old; defendant's mother had other children besides him; had heard of Moore shooting Lomax.

JOHN A. WILKES, recalled: Last year Conoley was taken suddenly sick, about the last of November or the first of December, at witness's house, shivering and shaking; fell across a chair, and made a noise like a man dying in a struggle; seemed perfectly stiff; laid him down on the floor, and sent for Dr. Currie, who assisted Conoley to get back to his mother's.

Cross-examined: Conoley had candy in his pocket; three round red pieces and others in the shape of shoes and shot; gave witness some, who ate two pieces, and gave little boy one; his wife threw the rest in the fire; witness nor child was sick; knew of bad feeling between Millard Moore and Conoley; three or four years previous had heard Moore say he would shoot Simeon Conoley or any others he found on his land; saw a wound on Lomax, and was present when Moore was convicted.

GEORGE CURRIE (colored): Lived at Conoley's when he was killed—employed by McDougald; went for a physician for Conoley when he was sick at Wilkes's; saw McDougald at Conoley's that day; came there the day before; saw him when he left with Conoley in a buggy; it was eight or nine o'clock; defendant was there about once a month

DR. CURRIE: Was called to see Conoley about 1st of last December; found him trembling and jerking; did not have a chill; his lower extremities were not convulsed; had been a practicing physician fourteen years, but not in active practice for the past four or five years.

AFTERNOON SESSION.

DR. CURRIE'S examination continued: Was never before the State Society; am a graduate of Edinboro College, Robeson county; I gave only an emetic.

DR. D. N. PRINCE: Graduated in 1871; the symptoms testified to by Wilkes and Dr. Currie indicated irritation about the spinal cord; the defendant spoke to him about Conoley being poisoned by candy given him by defendant; said he had a letter to that effect; brought witness a box of the candy with the powder in the box; it looked like strychnine, and witness advised him to see Everington about it. Witness asked to see letter, but the defendant couldn't find it in his pocket; witness made a test of the powder, and found it to be strychnine; if relieved by an emetic it would indicate poison to the spinal cord.

Cross-examined. Meningitis will produce similar results; a small quantity of strychnine will produce death; it would take effect in fifteen minutes; adults are rarely thus affected by indigestion.

G. D. EVERINGTON: Live at Laurinburg; am a druggist; about last December McDougald inquired for Dr. Prince at my store; he afterwards found Dr. Prince; defendant walked to the candy-stand and called for brandy-drops; called for an open box, and went to Dr. Prince's office; witness followed, and found them examining the candy; asked what was the matter; defendant walked out; found powder in the candy-box; it proved to be strych-

nine-powder; had strychnine-powder in the store on the upper shelf, but it never had been opened; defendant's character was good.

POWELL HILL, a clerk in the drug-store, testified: Defendant called for brandy drops about last December; two weeks later called for more; witness offered to wait on him; defendant said he would wait on himself; said he would take two nickels' worth of candy out of the show-case, and did so, after fumbling in the brandy-drop box sometime; saw a white powder in the box; never saw the powder in the box before; sold candy out of the box on the previous Saturday.

Cross examined: Was not paying particular attention to prisoner; it was the same day Drs. Everington and Prince made the examination.

W. S. GRAHAM testified: Measured the tracks leading from the spot where Conoley was killed; followed the tracks from the fence to the public crossing at the ditch, and to the swamp, where was evidence of a halt; saw defendant at Conoley's funeral; Conoley's financial condition was poor; he had been driving a wagon; didn't know whether he worked on wages or not.

Cross-examined: Didn't know whether Conoley owned the farm or land; heard he had bought a piece of land; didn't know about what property he had; found a ball six inches in the ground under Conoley's head; the ball was wrapped in hair.

A. F. BIZZELL: Knows defendant; heard of the murder; received a note from defendant, by J. A. Roper, last April, saying: "Millard Moore will be at McBride's that night; carry some picked men; you will be met; grandmother is in a terrible condition." It was a sealed note; defendant's character was good.

J. A. ROPER: Remembered the note; McDougald acted the part of a negro in a concert at Laurinburg; had a slouch hat, wig, false whiskers, a little budget on shoulder, a stick run through the package; had known defendant for years, but could not tell who he was at the concert; defendant's character, up to the murder, was without blemish.

MCKAY MCKINNON: Saw defendant at the house April 25th; he came from the direction of Laurinburg; said he was going to McKinnon's mill for some clothes he heard were over there that might lead to the detection of the murderer; defendant returned with the clothes—gray cassimere pants, a new undershirt, a box of lampblack; asked witness if he didn't think the man who wore the clothes was a ploughman; defendant thought the man was Millard Moore; the cotton shirt was soiled.

SECOND WEEK.

MONDAY MORNING.

GEORGE CURRIE recalled: Lived on Conoley's land in April of this year, and worked on after murder; next day after Conoley was killed went after defendant; found him at home, in shirt sleeves and stocking-feet; asked how killing occurred—no other conversation; recollects going after doctor.

Cross-examined: Reached Laurinburg at 1 or 2 o'clock.

W. H PHILLIPS: Saw defendant on Wednesday of week after murder; rode up to witness's blacksmith-shop at Antioch; witness said he would like to see the mysterious clothes; defendant drove off immediately, making no answer when witness said that perhaps he might know the pants; didn't say where he was going; shop is about eighteen miles from Laurinburg, and three or four miles from John Conoley's.

Cross examined: Only knew defendant when he saw him—not well acquainted; met him first at Conoley's burial.

H. H. HODGIN: Saw defendant on Wednesday of week after murder, at Antioch, drove up to witness's store, and had a short conversation, asked if there had been any arrests made, and replied that thought not, but investigation was going on; told defendant that Malloy McBryde had gone to Maxton, and had asked him to go and see clothes found at [McMillan's] Mill. McBryde returned that evening; witness, speaking to McDougald, said: "You have the clothes at Laurinburg, I suppose, not seeing them with you," can't say what reply defendant made, did not show clothes to witness; defendant said he was going to Conoley's. Circumstances of Conoley somewhat straightened in fall of '90.

Cross-examined—Didn't know that he was related to Conoley; couldn't

say, of his own knowledge, what property latter owned in year 1890.

T. E. PHILLIPS recalled: Didn't say he saw prisoner at water-tank April 21st, but based statement on what he heard of murder, and fixed date by that; it might have been 21st, and might not; defendant's being at water-tank, shabbily dressed, caused witness to notice him; Lockamy's train overtook witness's train at Red Springs.

D B. MCLAUCHLIN: Tax-list taker in 1890; don't know what Conoley was worth.

Cross-examined: Knew W. P. Daniels, representing New York Life Insurance Co.—saw him at Antioch; didn't know where he came from, or where he was going.

Here the State rested.

TESTIMONY FOR THE DEFENSE.

W. D. B. MCEACHERN: was at concerts at Laurinburg and Mason's Crossing; saw defendant act part of negro, with negro wig and whiskers of iron-gray, cutaway black coat wrong-side-out, blue overalls patched and good deal worn; witness blacked defendant's face; helped black defendant's face in same part at Mason's, but recollection not so clear as about Laurinburg, where witness also took part; didn't think defendant wore wig at Mason's; known the prisoner all his life, and character as good as that of any man he ever knew; Phillips wore duster at Laurinburg.

Cross examined: Don't remember dates of concerts; defendant dressed in three different styles—stick, bundle over shoulder, with dog; didn't think defendant wore duster at Laurinburg; thought defendant attempted to turn out whiskers, but cut them off; saw defendant twice after murder, and he was only wearing moustache; couldn't describe costume at Mason's except that defendant's face was blacked, and carried stick and bundle over shoulder; last saw defendant on Sunday before he left; charcters of J. C. Robbins, G. D. Everington, G. S. McMillan and Powell Hill are good.

R. D. PHILLIPS: Was at concerts at Laurinburg and Mason's Crossing; at former defendant wore coat wrong-side-out, negro wig sprinkled with flour, iron-gray whiskers; witness also acted negro part, wearing drab-colored duster, which he borrowed, but not from defendant; at Mason's prisoner was dressed about the same as at Laurinburg; defendant is in easy circumstances, without incumbrances, and rather charitable and liberal; don't know prisoner's dealings with Conoley's family, except that at times he bought farm supplies, and sent them out to Conoleys, while the firm of Phillips & McDougald was in existence; witness paid prisoner about $1,000 after dissolution of the firm; read notice to defendant of murder of Conoley; prisoner borrowed witness's horse and buggy to go and see about it; didn't notice prisoner's face being unusually red; character of defendant very good up to this time.

Cross-examined—Don't charge defendant with being liberal of witness's funds; never had any cause to believe it; at concert spoken of defendant had on a slouch hat; don't know whose whiskers he used; defendant, in business, didn't charge rations up to anyone but himself; defendant had a pistol, and kept it in the money-drawer; defendant wanted the horse and buggy to go to Robeson, saying: "My uncle was killed last night;" never heard prisoner charged with the murder until it was reported that he had left the country; he generally wore a moustache; do not recollect seeing defendant wipe a pen by drawing it across his pants—no ink-stains on side of pants; went to see prisoner in jail, who said he went to Charlotte, Greensboro, Lynchburg, Kansas City, Oregon; that it was a fine country; didn't say what names he went under; preferred to have nothing to say about the charge of murder; in September, 1890, thought defendant was worth about $3,000; the character of G. D. Everington, G. S. McMillan, J. S. Robbins, Powell Hill, E. F. McRae are good.

AFTERNOON SESSION.

JAMES LEAK: Telegraph operator of Cape Fear & Yadkin Valley Railway at Fayetteville; keeps record of trains; no extra train ran from Fayetteville to Maxton April 21st, 1891; had examined records.

Cross-examined: Arrival and departure of trains registered in book in office, which showed no registration of extra train that day.

I. W. CLARK: Master-mechanic Cape Fear & Yadkin Valley Railway; keeps no account of extra trains; would have to judge by mileage given in by engineers; book showed no extra mileage for T. E. Phillips April 21st; found record extra mileage for T. E. Phillips April 25th, and record that Phillips was on road that day; possible that he went out April 21st, but, if so, should have been recorded at telegraph office, which was place for such record.

J. A. MCLAUCHLIN: Yard-master Cape Fear & Yadkin Valley Railway; makes up all trains leaving Fayetteville; record kept of trains leaving and arriving; no extra left Fayetteville April 21st.

Cross-examined: Record of conductors and engineers kept in telegraph office; always conductors on trains running as far as Red Springs.

R. D PHILLIPS recalled: Prisoner told witness attorney advised him not to talk about murder; defendant generally wore blue flannel suit in store, but black suit for Sunday; no recollection of defendant's light suit; thought prisoner of rather timid nature; never heard of his having difficulty with anybody.

Cross-examined: No recollection of defendant's pepper-and-salt pantaloons.

JOHN SELLARS: Saw defendant at Alma April 22d, at 8 or 9 o'clock; in two or three feet of him; saw nothing unusual; no black on face; did not notice how he was dressed; was busy in store at time.

Cross-examined: Talked with prisoner; didn't say where he was the day before; don't remember that I ever saw prisoner there before; characters of E. F. McRae and A. J. Cottingham good.

W. W. MCGIRT: Saw defendant at Alma April 22d, early in morning; talked and shook hands with him; saw no black on face; defendant's previous character was good.

Cross-examined: Been living at Alma two or three years; never saw prisoner there at time of day before; don't recollect conversation; told defendant he was busy, and some one would show him around; thinks defendant was dressed in black; never saw defendant with whiskers before now.

DANIEL MCKINNON: Clerking at Campbell's Bridge April 21st; late that night man came to window and wanted crackers, whose name was Cole, a rafter; saw clothes found near bridge--pants, undershirt, handkerchief and old hat; pants rather small—judge would fit Cole—certainly too small for McDougald.

Cross-examined: Had been asleep when Cole called; had seen him before that; didn't see him have wig or whiskers; on Thursday night Cole paid for crackers; didn't know where Cole lived, or how he was dressed that night; there was little blacking on neck of shirt found.

E. J. HESTER: Saw clothes on bank of river [describes them as above given]; saw little blacking round neck of shirt; remembers some one coming to store Tuesday night, but did not see him; saw man pay for crackers on Thursday; knew Edgar Gillespie, and had conversation with him and another negro; told Gillespie he supposed he would have to go to court, and Gillespie replied, "Yes, and he would, too, and would all be there together;" asked Gillespie if he was certain it was McDougald washed at his house that morning; replied that he was not certain; didn't think Gillespie's character was good; Gillespie traded a little more about time of court than before.

Cross-examined: He saw no blacking on shirt-sleeves; saw opened package of lamp black; knew Cole; thought he lived some miles distant; last saw Cole week or so after; never heard of Cole leaving; didn't see man at the time he bought the crackers; hadn't passed there with raft in week or two; again asked Gillespie at Lumberton if he was certain it was McDougald who washed at his house, and he replied that he was; then asked him why he first said that he was *not* certain; have not received money from any one connected with case, or been employed to work up testimony.

E. J. POWERS: Saw prisoner on platform at Maxton, at 6:30 or 6:40, April 22nd; was engineer C. C. R. R.; shook hands with defendant; saw nothing unusual about face; was engineer of train on which McDougald went down that morning.

Cross-examined—General character of G. S. McMillan and J. C. Robbins good; didn't notice defendant's shoes were muddy, or that he had bundles; couldn't say that he ever saw prisoner

at Maxton so early before; don't remember telling W. J. Edwards that defendant looked "seedy," and had either been up all night before, or drunk.

REV. CHALMERS MOORE: In conversation Powers told him, in substance, what he had given on stand; defendant's character hitherto good—also characters of W. D. B. McEachern, R. D. Phillips, J. C. Robbins, G. S. McMillan, D. D. Livingston, J. E. Purcell, E. F. McRae; a few weeks after murder when he had conversation with Powers; Edwards told him, in substance, what he had testified to on stand [witness gives testimony as to defendant's dress at concerts]; last saw prisoner at prayer-meeting at Laurinburg, the night before it was reported that he had left State.

OWEN PAGE: Telegraph operator of Cape Fear & Yadkin Valley Railway at Fayetteville, with brother and Mr. Leak; was in office April 21st; no record of special train on that day. [Cross-examination developed nothing new]. Adjourned.

TUESDAY—MORNING.

JOHN WILLIAMS: Last year lived at Campbell's Bridge in house of two rooms—he in one room, Edgar Gillespie in other with wife; thought Gillespie worked at McColl's April 21st; heard that Conoley was killed night of 21st, when Gillespie's wife was at McColl's; witness rose next morning at light, and saw no one; didn't think Gillespie stayed in house that night—has no recollection of his being there; cooked breakfast, and was in house till half-hour by sun.

Cross-examined—No one lived with witness, but had hired girl to work for him; at time Gillespie was working at McColl's usually came home Saturday night, returning on Monday morning; didn't see anybody in house night of 21st or morning of 22nd; at latter time Gillespie usually fed his hogs and chickens; Gillespie's wife went to McColl's on Saturday night before killing; had said before, as he said now, that if Gillespie stayed in the house night of April 21st he didn't know it; had talked with lawyers here about case.

R. F. DEVANE: In business near Wakulla; didn't think Gillespie stood well in community; boarded freight train on Cape Fear & Yadkin Valley Railway April 21st; saw one passenger, with whom conversed; couldn't say prisoner was that man, but his best impression that the man was much build of prisoner, but darker complexion; didn't see any extra train.

Cross-examined—Man he saw had sandy moustache, ordinarily dark complexion; man asked how long train would stay at Red Springs; asked about growth of town; positive passenger had no duster—might have had valise on seat; couldn't say prisoner at bar was man on freight train.

J. F. MCLAURIN: Live near McColl's; general character of Edgar Gillespie not very good; defendant's character good.

R. D. PHILLIPS recalled: General character of E. J. Powers and J. F. McLaurin were good; spoke to Gillespie after he left stand, who did not recognize witness; told some one at hotel of what Gillespie had told him; couldn't say Gillespie had traded with Phillips & McDougald.

D. T. HARGROVE: Live in Laurinburg; general character of Edgar Gillespie very bad; characters of J F. McLaurin and E. J. Powers as good as anybody's; prisoner's previous character unspotted—regarded as modest, rather retiring man; defendant was not superintendent but secretary and treasurer of Sunday school; was at home or thereabouts time of murder, being town officer; from time people first heard of murder they said murderer ought to be lynched, only threat he heard made was by Millard Moore, who said he would get even with McDougald when he got out, which was before McDougald left; in meantime, he had secured arrest of John Kelly, charged with the murder, whom he took to Montpelier May 1st; about that time heard flying rumors about lynching defendant; issued warrant for prisoner's arrest May 4th; excitement in and around Laurinburg was such that the citizens of the town said if people of Robeson came up for defendant they would accompany him for protection against violence; defendant was not regarded as rich, but simply independent; it was about 18 or 21 miles from Laurinburg to Conoley's.

Cross-Examined: Thought defendant left May 1st; didn't know that threats of lynching had ever been mentioned

to McDougald; Millard Moore was liberated 4 or 5 days after McDougald left; most of those witness heard talk in Laurinburg were defendant's friends; had heard of threats as early as Wednesday before prisoner left; thought defendant, in 1890, was worth between $5,000 and $6,000.

RODERICK MCRAE: Live in Laurinburg; defendant's character good; thinks McDougald, about May 1st, was worth about $5,000; on Sunday before prisoner left first heard that Millard Moore charged him with murder, and heard that if he was carried to Maxton it would not be safe, as he would be lynched—that it people around Maxton got hold of him he would be lynched. [Describes location of Maxton and Lumberton].

Cross-exaniued—Characters of J. C Robbins, G. D. Everington, G. S. McMillan, E. F. McRae, Powell Hill good. [Question by State as to whether prisoner was ever before charged with other offense objected to by defense; objection sustained]; McDougald left several days before Millard Moore accused him of the murder.

ALEX. MCMILLAN: Edgar Gillispie lived on his place last year—general character not good; characters of defendant, A. J. Hester, D. T. Hargrove, E. J. Powers, G. S. McMillan, G. D. Everington, Powell Hill and J. C. Robbins good.

T. A. MCBRYDE: General character of Edgar Gillespie 13 or 14 years ago was not got.

J. H. PARKER: Live at Maxton; Sunday after McDougald left country, in a crowd, heard some one say prisoner was charged with the murder, and some one said he ought to be taken, and he would be one of a number to go for him; Ed. McRae, justice of the peace, proposed to issue warrant for arrest.

Cross-examined—This was Sunday after McDougald left; opinion was that murderer was man who got on at tank, which prisoner did; feeling against defendant was very strong; Tom Pool, Alex. McKinnon, Ed. McRae, Sam Parish were in crowd; witness went to Laurinburg to ascertain whether or not reports were true, but hadn't seen prisoner before to-day.

S. J. SMITH: General character of Edgar Gillespie is not good

J. S. HADDOCK: Conductor on C. C. R. R.; run train that passed Maxton on April 22nd; saw all passengers, and collected tickets; noticed none with blacking on face; didn't know McDougald, but saw no one of unusual appearance, which thinks he would have noticed.

Cross-examined: Wouldn't have known prisoner from anyone else; didn't examine back of anybody's neck; know W. H. Herring—nothing against him.

MCKAY MCKINNON recalled: As to the clothes, it was a woollen undershirt—little black on neck; thought blacking could have been caused by wearing; good deal of rafting at Campbell's Bridge; hard work.

Cross-examined: Thought it was fine shirt; had never known any one to raft in such goods; a man rafting logs wouldn't be likely to wear such clothes.

JOHN F. SMITH: Sheriff of Richmond County; character of Captain Powers good; D. D. Livingston told him that reports published were about correct; saw defendant on train; prisoner's previous character good.

Cross examined: Don't know whether or not clothes were at preliminary trial; received warrant for arrest of prisoner, issued by E. F. McRae, and sent through Sheriff Pitman, but could not find him; characters of G. S. McMillan, G. D. Everington and J. C. Robbins are good.

W. G. QUAKENBUSH: General previous character of defendant good; heard that Millard Moore had charged McDougald with the murder before defendant left; afterwards heard that threats had been made against McDougald.

Cross-examined: Thought it was about Wednesday before defendant left that he heard of charge by Moore; after defendant left heard threats had been made against him; characters of G. S. McMillan, Powell Hill, G. D. Everington and E. F. McRae good.

HECTOR MCLEAN: Lives near Laurinburg; on Friday after murder went to Montpelier on church matters, but his brother told him he heard prisoner was charged with the murder, and witness went to Laurinburg; on Monday following Crowson said there was strong evidence against defendant; no character better than that of prisoner; bought alum, for child with croup, at Everington's drug-store, which proved to be borax; characters of E. J. Powers and D. T. Hargrove good; had never

heard any threat against defendant until after he left; supposed he was in easy circumstances.

J. T. ROPER: Live in Laurinburg; defendant's character good; heard after defendant left of threats of lynching; characters of Powers and Hargrove good.

Cross-examined: Characters of McMillan, Everington, Hill and McRae good; saw defendant short time before he left; had moustache.

M. G. MCKAY: Prisoner clerked for witness three or four years; character good; heard of threats of lynching about time defendant left.

Cross-examined: Didn't recollect whether threats before or after defendant left; never saw him with beard on as now; character of Robbins good.

R. MCCASKILL: Live at Laurinburg; known defendant for eleven years; character first-rate; heard of some threats by a Methodist preacher at Maxton; defendant's financial condition thought to be easy; regarded as liberal in charitable and benevolent matters; never heard of any threats from Robeson before May 4th. [Testifies as to character of witnesses]; never saw prisoner with full whiskers; first intimation had of defendant's leaving was when officer came to arrest him.

A. MCKAY: Live at Laurinburg; prisoner's character good; first heard threats against defendant by preacher Crowson, of Maxton. [On cross-examination testifies as to character.]

W. H. MCLAURIN: Live at Laurinburg; known prisoner 25 years; character good from boyhood; heard threats against defendant before and after he left; heard that sentiment in upper Robeson was very strong against him; that it would be unsafe for him to be found around there; was alleged that prisoner was at that time at religious meeting at Rockingham.

Cross-examined: Thought it was on Tuesday or Wednesday before defendant left that he heard that Millard Moore said that, while he did not kill Conoley, he knew the man, and that man was D. A. McDougald; never saw prisoner with full beard before; characters of Robbins, Hill, McMillan, Everington and Livingston are good.

STEPHEN MCLEAN: Lives at Shandon; Edgar Gillespie told him man called at his house between daylight and sunrise, but couldn't tell who it was, who wanted water and towel; didn't know at first who it was, but afterwards found out; first carried out soiled towel, but when he found out who it was, got out clean towel from trunk, and his wife rasped him because towel got blacked.

MCRAE: Live in Laurinburg; known prisoner for ten or fifteen years—character good from boyhood; heard that Millard Moore had said when arrested that he did not kill Conoley, but knew who it was, and that it was McDougald; heard later reports from Robeson that it would be unsafe for McDougald to be found in that section. [Testifies as to character of witnesses.]

Adjourned for dinner.

TUESDAY — AFTERNOON.

STEPHEN MCLEAN recalled: Gillespie told him that it was defendant who washed black off face April 22nd.

NEILL CONOLEY, nephew of Simeon Conoley and son of John Conoley: Some time before 12 o'clock [The day of the month not stated—Reporter], after spending some time, father and defendant went off to McBryde's field, and while gone witness saw clothes in road-cart—old hat; pants, handkerchief, box blacking, undershirt, looked like knit shirt; last saw clothes after father and defendant returned from McBryde's; brother asked father if must take clothes into house; father responded that he had never known anything misplaced around there; this was about 9 o'clock at night of that day; McDougald slept in house that night with witness's brother, and after he came from McBryde's never went out of house that night; door fastened with a screw over latch; house built of logs; lampblack left in road-cart; man with McNeill, to whom lampblack was given, said his name was Daniels, and was insurance man; questioned witness about clothes; witness first discovered that clothes had been stolen next morning early; brother Willie told McDougald; first saw strange tracks about house after Conoley killed; was uneasy after seeing father and McLauchlin talking, after murder; didn't think defendant knew about door being fastened night he was there; defendant was uneasy and scared when he found clothes were gone; forget what he said, except that he was going

home; was accompanied by brother; wanted witness's father, but mother told Willie to go part of way; house and premises searched for clothes by Arch. Graham and others; it was after Mill Prong trial that McNeill and Daniels were at house.

Cross-examined: Never testified in case before; about noon that defendant came to father's, and then went over to McBryde's; first saw clothes in road-cart, nearly in front of door, and defendant had gone over to grandmother's; accidentally saw clothes; this was first time anything ever had been stolen at house; defendant said brought clothes to carry to Mill Prong trial; didn't think father ever saw clothes; didn't know that prisoner ever spent the night there before; witness was not at Mill Prong trial; defendant didn't help in search for clothes in woods; long slim track witness saw about father's house. Re-direct by defence: Father objected to clothes going in house—might go in barn.

EFFIE CONOLEY: Mother of Simeon Conoley (murdered man); in 86th year; have not walked in 10 or 11 years; stricken with palsy 32 years; never will forget night of murder; man came to fence—inquired where Wilkes lived; boys in house drying feet after bath; Simeon arose, and went out to paling where man was, who asked him to put him in way to Wilkes's house; Dan asked who man was, and Simeon said he called himself Lum Johnson—didn't say whether was white or black; Simeon put on shoes and started out, and man came into yard, went to well, and, suppose, drank; when Simeon started out of yard man followed slowly; witness was looking as he crossed yard to see who it was; moonshiny, and wind blew something like coat on him, which he caught up in hand, and witness saw up to his hips, and he had on dark pants; man followed after Simeon, and they had not been gone long when witness heard pistol-shot; man was taller than Simeon Conoley, with long, slim legs—tall, slender man; Simeon Conoley was taller than defendant; knew Dan McDougald from cradle; the man was not defendant—had not Dan's look, shape or anything; defendant frequently went to witness's house—nearly every month; witness always thought the feeling between Simeon and McDougald was good—always joyful at meeting, and while together; defendant was kind to witness and all the other members of family in many ways; got many things they all needed; saw Daniels, man who said he was insurance agent; came to house, but witness never invited him; Daniels talked to her and daughter, Lizzie; didn't know that he talked to anyone else; Morrison and Wilkes accompanied Daniels; John Wilkes didn't have conversation with witness and Daniels.

Adjourned to Wednesday morning.

WEDNESDAY—MORNING SESSION.

D. E. MCNAIR Live at Laurinburg; conductor on C. C. R. R; on duty April 21st; left Laurinburg 6 A. M., and went through to Wilmington that day; saw defendant come from father's residence to depot; shook hands; defendant said he was going to Alma with witness; remembers prisoner getting aboard train; didn't see prisoner, or have conversation with him between Laurinburg and Maxton, but saw and talked with him between Maxton and Alma.

Cross examined: Never told Capt. Elmore that saw defendant get off train at Alma, and go directly to depot of Maxton, Little Rock & Alma R. R.; thought it about 7.10 when train arrived at Alma; couldn't remember how many passengers had morning April 21st; A. J. Cottingham was on train, and got off at Maxton. [Records of C. C. R. R. Co. put in evidence, and showed two first-class passengers between Laurinburg and Maxton, on train to Wilmington, April 21st]; didn't carry defendant to Wilmington; thinks told Elmore at this term of court carried defendant to Alma.

DR. R. F. LEWIS: Character of Capt. McNair good.

Cross-examined: Held inquest on body of Simeon Conoley day after killing; saw and talked to Effie Conoley that day; she didn't say anything to witness about murder; witness asked any member of family to make statement, as he wished to get all information possible; inquest held in Effie Conoley's presence; told that Ed. Conoley was only one who went out to fence to see man who hailed; didn't examine Effie Conoley, as she didn't seem to know anything about it. [Verdict of coroner's jury produced in court—that Simeon Conoley came to

death by two pistol-shots in head at hands of man calling himself Lum Johnson.]

R. McCaskill recalled: Character of Capt. McNair good. [So also testified W. D. B. McEachern.]

Horace Jones: Work on Capt McNair's freight train; train started from Laurinburg 6 A. M. April 21st; that morning saw conductor and McDougald talking together; defendant got on train, having something like rubber coat on arm, with package wrapped in paper; knows defendant, and has traded with him.

Cross examined: One or two other passengers on train, whom witness didn't know; saw defendant get off at Alma; didn't know where he went from there; something after 7 o'clock when train reached Alma.

J. T. Roberts: Testifies to character of defendant and witnesses.

J. T. John, Jr.: Live at John's Station; character of Edgar Gillespie is pretty mean.

Here defense was permitted to submit testimony given at Mill Prong preliminary trial:

Sallie Wilkes: Saw man April 21st, fourteen miles from Simeon Conoley's, on public road, about thirty yards off; looked like a negro; had duster, broad-brimmed hat, valise strapped on shoulder, hanging down on side; couldn't tell whether he had beard; was tall and slender—tall as Simeon Conoley; had on dark pants.

Henry Smith: Saw man April 21st; didn't look like anybody ever saw before; long duster, wide-brimmed hat, long moustache, little beard under chin; was on opposite side of road; saw him in Jeff. Cobb's lane; about 2 o'clock; had on spectacles, valise on shoulder, with stick run through it; wore spectacles; was slim, tall man.

Harriet Humphrey: Saw man pass on road; was a black man—took him to be a negro; tall and slender; had on duster; package on shoulder, oilcloth over it; had on glasses; about 2 o'clock when passed house, 1¼ miles Shandon.

Effie Conoley being unable to attend court on account of feebleness, counsel and jury (court taking noon recess) went to her room at Martin House, on Bow street, and the following testimony was taken: Can see pretty well, but sight not as good as it has been; man who went off with Simeon night of murder was in ten steps of house; bright moon shining—bright as day; can see eye of needle, but hand shakes so badly couldn't thread it; saw man distinctly; the day Daniels, insurance man, came to house it was late in the evening, before dark; it was 12 o'clock before eat supper that night; unusual to eat so late, but daughter Lizzie was only one could cook, and she could not get away from insurance man, who remained there all night; Daniels talked to witness while she was in bed; house had been searched; couldn't say when searched, only it was after murder, and before Lumberton court; Arch. Graham, K. Leach, Norman McLeod and Millard Moore made search for clothes—turned over beds, opened trunks, examined cribs and smokehouse; can't hear well since took such bad cold four or five weeks ago; never made any statement different from what she has made at this court; at coroner's inquest Dr. Lewis didn't ask her to testify.

Cross-examined: Was sitting slanting from door, not far from fire-place, night man called and Simeon was killed, on south side of house, and Simeon and Daniel were drying feet by fire; chimney is in centre of west end; had to look slanting out of door; a negro named Tom McRae resembles man who went with Simeon, but didn't think he troubled anyone; didn't see man when he came up to paling; nobody went out but Simeon and Edwin—a little boy; Dan. Conoley was there that night; couldn't say what color coat was man had on; wind blew coat about him, and he caught it up, witness seeing up to his hips; didn't see color of hair; couldn't say whether he wore beard or not; Dr. Lewis came to house day after murder, but said nothing to her, only shaking hands; inquest held in house; D. B. McLauchlin arrived before Lewis, and expressed sympathy for witness for what she underwent night before; replied that she thought she was born to trouble; remembers Edwin McNeill summoning her to court.

WEDNESDAY—AFTERNOON SESSION.

D. B. McLauchlin: Live near Antioch, two and a half miles from scene of murder; heard of murder on evening of April 22nd; went over at once, and had conversation with Effie Conoley; went to investigate murder; expressed sorrow for Mrs. Conoley, who said her cup was full; told her she seemed born

under ill-fated star, in which she acquiesced; asked her if she saw disguised man, and she replied in the negative—that no one saw him but Simeon and Edwin; that Lizzie "glimpsed" him at fence [Diagram exhibited, showing location of dwelling, chimney, door, kitchen, well, gate and point where Conoley was found—Reporter.]; didn't think anyone going from well to point where Conoley was killed could have been seen by anyone sitting in south side of dwelling; well acquainted with location of premises; Effie Conoley told witness she was sitting near fire-place; one could hardly have seen anybody passing—sitting where she said she was; know M. A. McDougald, father of defendant; had seen John McDougald, but did not know him; defendant has no other brother; know Lizzie Conoley.

Cross-examined: Did not make plat and diagram, and not positive that they are just what they purport to represent; thought kitchen properly represented in diagram; path bends before passing kitchen; fence twelve or fifteen feet east of the building; couldn't say dwelling sat in middle of yard; plat not made by any measurements witness knows of; if Mrs. Conoley had been sitting in south-east corner of room she could not have seen anyone walking from well on out to spot of killing.

E. A. McNeill: Live in Robeson; about 1¼ miles from where Conoley killed; saw Mrs. Conoley previous to Robeson court, who said she didn't know why they summoned her, as she knew nothing.

Cross-examined — Acquainted with Conoley premises; well between house and gate—kitchen south-east of house; one sitting in south-east corner of house could not see anyone walking on path.

Geo. Cole: Live in Moore county —doing business in Richmond; April 21st carried timber down creek to Alma, and stopped at McKay's store at Campbell's Bridge, where bought crackers; didn't know Conoley; never left pants, lampblack, shirt, &c., such as found at Campbell's Bridge; thence, at 10 o'clock, went to place of work up river; had one hand with him that night.

Malloy McBryde: Live about 2½ miles from scene of murder; know premises at Conoley's—frequently been in house; chimney in west end; house sits east and west; impossible for any one sitting in south-west of house to see one walking path to where Conoley killed.

Cross-examined—Anyone sitting in south-west corner, nearer door than fire place, could see one in path; was a path leading from well to a house supposed to be crib; night of murder was calm night.

O. E. Crowson: Live at Maxton; saw McDougald Wednesday in Maxton; wanted to rent house; shoes dusty and muddy; about 10 or 11 o'clock; defendant got on Laurinburg train; twice got defendant oranges, who said: "Did you ever feel like you wanted anything, and nothing would satisfy you?"

Cross-examined—Shoes looked red and muddy; lived at Maxton 2 years.

D. E. McBryde: Live in Robeson, about 8 miles from the scene of murder; was one of magistrates investigating murder, and know nothing of threats of lynching defendant; saw McDougald at my house on Wednesday before he left country; defendant said nothing about clothes; witness remarked: "Millard Moore or public has saddled crime on you;" defendant replied: "How's that?" witness responded that it was believed that man who got on train at water-tank was murderer; that defendant was accused of poisoning uncle fall before; defendant said he could prove whereabouts—was at Maxton that day, and took train back to Laurinburg; asked witness if he didn't think he had better go home; witness said: "Yes, and work up all evidence against Millard Moore and others charged;" defendant asked if witness had further use for him, and he replied not—unless more came against him; defendant hitched up and left with John Conoley; this was evening of night clothes stolen.

Cross-examined — Spoke jokingly with defendant, who was with John Conoley; John swore out warrant against Moore at witness's request; M. A. McDougald employed counsel to prosecute Kelly, charged with the murder.

Ed. McRae: Lives at Maxton; brother of E. F. McRae; heard of no threats against defendant before or after he left country.

Alex. McKinnon: Characters of Hector Gilchrist and John Williams good.

Evidence for both sides closed, and announcement made that bench would hear argument in morning. Adjourned.

On Thursday morning—Thanksgiving Day—court was convened promptly at 9:30 o'clock, and it was announced from the bench that counsel might proceed with the argument in the case.

MR. N. A. McLEAN—FOR THE STATE.

N. A. McLEAN,
Of Lumberton, N. C.

May it Please Your Honor, and Gentlemen of the Jury:

This, sir (to his Honor), is largely, if not altogether, a question of facts for the jury. Did the defendant kill the deceased? If he did, there can be question that he is guilty of murder. We shall expect your Honor to charge the jury that if the evidence introduced satisfies them, beyond reasonable doubt, that the defendant is guilty, they must say so; if the evidence, the whole of it, or a part or parts of it, satisfies them of it they must say so. Gentlemen of the jury, I congratulate you that at last the testimony in this case has been concluded; I congratulate you upon the fact that the end is almost in view—that your arduous labors will soon be over. I trust, gentlemen of the jury, that when you shall have concluded your labors it will be said by all men that you have arrived at a righteous conclusion. I believe it will be so said. Unless the State has satisfied you beyond reasonable doubt of the guilt of the accused, we do not ask or expect a verdict of guilty at your hands; if the State has so satisfied you, we have a right to expect it, and we believe you will give it. It is proper, at the outset, that I should state my position. Much has been said, much will be said, about the connection of the insurance company with the prosecution of the defendant. It is a fact conceded by all that Mr. Neal is the attorney of the insurance company; about that, gentleman of the jury, I have very little to say. Mr. Neal is able to take care of himself, and will do so. This much, however: the insurance company had the right to employ counsel, or he would not have been in the court-room by the permission of his Honor. So far as Col. Rowland, Mr. McNeill and myself are concerned, however, we have no connection, either near or remote, with the insurance company. I stand here to day and will say what I intend to say in behalf of law and order, in behalf of truth and right, as I conceive it to be. No man dare say that the representatives of the State in this case have done aught that was improper; yea, more than that, have done aught than was their sworn duty to do.

Now, gentlemen of the jury, I come before you this morning with a feeling of sorrow and extreme regret. I did hope, when we went into this case, I did hope that the accused, D. A. McDougald, would be able to lift this heinous charge; I did hope that at least there would be a reasonable doubt about his guilt. If I conceived this morning—and this is not an empty declaration—if I conceived this morning that there was, I would retire instantly from the prosecution. I thirst for no man's blood; I desire no innocent man convicted; I will prosecute no innocent man if I know it. I would not ask you, gentlemen of the jury, to convict him, as I shall ask you to do to-day, unless I would do the same thing sitting in your places; it would be criminal in me to do so—highly criminal to urge you, by anything I could say or do, to convict a man of this charge who is innocent of it. And I want to say this: If, in the course of anything I may have to say, if, in the course of any of my remarks, I shall travel out of the evidence; if any of my inferences are unwarranted by the evidence as we have heard it, I am not only willing, but I ask his Honor to correct me; I am not only willing that it should be so, but I ask the counsel for the defendant to correct me and I will repair the wrong done immediately. We want to take no short cuts; we do not desire him convicted on technicalities or quibbles. Nay, more than that, gentlemen of the jury; I ask not only for the counsel for the defendant, and

I ask not only for his Honor, but I ask for you and myself the guidance of the Holy Spirit, Who, above all things, prefers the upright heart and pure, to guide us, to illuminate us, to make that which is dark bright, in order that we may come to the heights of duty.

Now, the first thing in this case was the oath administered to you. Let us see what that was; "to try this case, and a true verdict give according to the law and the evidence." Nothing that I can say or may say, nothing that the counsel for the defendant can say or may say, outside of the evidence, can aid you in arriving at a conclusion, and it is sufficient, gentlemen of the jury, to cause you to question the soundness of any position when he who takes it has to go outside of the case to support it. Let me say that if I can aid you in any way in coming to a proper conclusion in this matter I will do so.

It is said by the State that the defendant is the murderer of Simeon Conoley. Why was this charge brought against the defendant? Why this accusation? Let us take the evidence as it came, not as you heard it—not in the order you heard it as you heard it, but not in the order; let us begin at the very beginning, and let us support, as we go along, every statement by some reputable witness, calling the name of the witness. We will first call your attention to the testimony of Dr. A. W. Hamer, of Laurinburg, county of Richmond, a gentleman of unquestionable character, a neighbor and friend of the defendant. He says that the defendant brought Simeon Conoley into his office for the purpose of having a medical examination made; that he, Dr. Hamer, had never seen Simeon Conoley before; that he was introduced to him by the defendant. The examination was made by Dr. Hamer; the application was forwarded by Dr. Hamer to Mr. D. C. Roper, a gentleman from South Carolina, who states that his business is farming and insurance. About the time this was done the following card was written by the defendant to Mr. Roper:

LAURINBURG, N. C., Sept. 30, 1890.

DEAR SIR:—You can send me the policy, and I will remit to you. Mr. Conoley arranged it with me to pay you, so you can send or bring it when you come.

Yours respectfully,
(Signed) D. A. McDOUGALD.

This postal card, gentlemen of the jury, is identified as one sent by the defendant; he has not denied that he sent it. Upon that application and in answer to this postal card, Mr. Roper tells you that he went to Laurinburg with Mr. Killebrew; that they get the money from the defendant, D. A. McDougald, that McDougald met them near the door; that Killebrew went back into the rear of the store with McDougald, and in a few minutes came out with the money and without the policy; that he, Roper, the insurance agent, had never seen Simeon Conoley. Simeon Conoley was never known in the transaction until he was brought to Dr. Hamer by the defendant for the purpose of having a medical examination made, and, so far as the evidence shows, he was never known in the transaction after that until he closed it with his life's blood—the defendant applying for the policy, the defendant paying the premium of $239, the defendant taking the policy, the defendant keeping the policy, the defendant, as I can reasonably argue to you from the evidence, having the policy at the time of the death of Simeon Conoley. If it were not so, gentlemen of the jury, it would have been shown you; we traced it into his possession, and it never has been traced out. Is it not true? If it is not, correct me. The beneficiary named in the policy as Margaret E. Conoley, or as she is sometimes called, Lizzie Conoley, so far as the evidence goes, never has known anything of the application or the issuing of the policy, never has seen it or has had it in her possession. Is not that true? If it were not true why was not Margaret E. Coneley put upon the stand to say that it was not true? She was here as a witness for the defendant; she came here for the express purpose of aiding and assisting him by all means in her power. If she had said, or could have said, that there was any arrangement between her and the defendant by which he was to do this act for her benefit, she would have been put upon the stand, as a matter of course. Able, astute counsel, as are those for the defense, do not trifle with a man's life by withholding from the jury evidence so important as that, if it had existed.

But they say, gentlemen of the jury, "oh! he was a liberal man," and their argument will be from that; "I have no doubt that he intended this as a gift for his aunt;" if the evidence of his liberality was offered for any other purpose, it was incompetent. If it was offered for any other purpose than that, it does not prove it, and it does not prove that he, a man worth probably from $3,000 to $4,000, was going to make a gift of $239 per year for twenty years to his aunt, without her knowing anything in the world about it, without ever having told her of it. Liberality! Extremely liberal with the same aunt, he was! Why, the old woman and poor old Simeon Conoley, as defendant himself stated to Mr. John Currie on the day of the burial of Simeon Conoley, this same aunt and Simeon Conoley were so straightened that they had to give a mortgage to Mr. Thomson, of the town of Fayetteville here, on their home. How did his liberality come in there? Did it pay off that morgage and say: "Dear Aunt, I make a gift of this to you; I want to save your home for you." Did he say: "Here, dear uncle, I have paid off this mortgage, and I hand it over to you as a gift; I want to save your home for you." No, no; he paid it, but he took a transfer and held the place; and thence he became the owner of their home, and put this poor old uncle of his in as a tenant. Did not he tell John Archie Currie at the burial that the place belonged to him, Simeon Conoley's place; that he took up this mortgage and since then he has owned it? "Well," says Mr. Currie, "has not he bargained for the Carter place?" "Well, I don't know; I have heard it indirectly; I have understood that he paid fifteen hundred pounds of lint cotton on it, but if he did he made it with my mules and my guano." Liberality! From the time this mortgage went into his hands we hear no more of Simeon Conoley's ownership of the land. In keeping his account, the amounts sent there are not charged up to Simeon Conoley on the books of Phillips & McDougald, but they are charged up to D. A. McDougald's farm account.

Now, gentlemen of the jury, go a step further. We have here a statment, the medical examiner's report, signed by Mr. Conoley, the dead man, in which he represents himself as being in sound health, in sound bodily health. It does not appear from Dr. Hamer's examination or from Simeon Conoley's own statement that he was in anywise afflicted on the 12th day of September 1890; we never hear of his having been so until after the issuing of this policy of insurance for $5,000. And then, what happens, gentlemen of the jury? [I want to say right here that I intend to ask you to convict this man upon evidence of which there can be no reasonable doubt.] After this application was made out, after the issuing of the policy of insurance, what happened, gentlemen of the jury? You know. The defendant, D. A. McDougald, within two months after that time is down at Simeon Conoley's, just about Christmas of the year 1890. Any doubt about that? George Currie—who was working for the defendant then, and is staying on this Conoley place of his now, who has not been contradicted, who could not be contradicted, whose character could not be in anywise impeached, if he is a colored man—tells you that on a certain morning, soon after the policy was issued, after the defendant had remained at Simeon Conoley's all night, he, the defendant, and Simeon Conoley were seen going along together. The next we hear of Simeon Conoley is that he is over at John Wilkes's, and is in a very strange condition. Now, what Simeon Conoley said, gentlemen of the jury, was not in evidence before you, if he said anything; but we know this: we know from the symptoms described by John Wilkes, the choking, suffocating sensation, the rigidity of the limbs, the jerking back of the head; from those symptoms described by John Wilkes and by Dr. Currie, Dr. Prince, a physician, than whom none stands higher in North Carolina—I except no man—Dr. Prince told you, gentlemen of the jury, that the symptoms betokened poison by strychnia or some other like poison. I don't propose to dwell on that point; they will say that other things could have caused the symptons. I will say this, gentlemen of the jury: he said that lockjaw might have produced it. Well, now, did Simeon Conoley have lockjaw on that day? Has there been any evidence? Has anybody sworn that he did? Has anybody intimated that he did? You know he did not. A man never

has lockjaw and gets over it in as short a time as this, and besides it follows some injury. Dr. Prince said furthermore, gentlemen of the jury, that meningitis might have produced symptoms similar to these. Did Simeon Conoley have meningitis? Has anybody said he did? If he had meningitis would not he have been prostrated for some time after that? Of course he would. And furthermore on cross-examination he stated that indigestion probably might have put him in that condition, but he had never heard of anyone but an infant being in that condition from indigestion; and upon that, gentlemen of the jury, the defense will argue to you that he was really not poisoned. On that testimony, with poor Simeon Conoley occupying his narrow cell as he does to-day, where malice and envy, where the ball of the assassin cannot reach him any more, there might be some doubt about it, except for the statements of the defendant himself. Let us see what he said about it. I will not put a hypothetical case to you now. I will not put the symptoms to you as described by Mr. Wilkes or Mr. Currie, but I will put D. A. McDougald *vs.* D. A. McDougald, and see what he says about it. Dr. Prince stated—deny it, contradict it, if you can, or correct me if am wrong—Dr. Prince stated that the defendant himself had come to him and told him that he had heard, had just heard that his tenant—always his tenant, never his uncle—that he had just heard that his tenant had been poisoned by some candy he had given him to eat. Is there any uncertainty about that? That he had just gotten a letter to that effect. Is there any uncertain ring about that? That disposes of the poisoning business; that is McDougald *vs.* McDougald: that is the high-toned, Christian gentleman, as he was supposed to be then, against the accused murderer now. I confess, gentlemen of the jury, that in the light of subsequent developments, whatever he says ought to be taken with many grains of allowance, but that is what he said to Dr. Prince, and it has not been denied, and it cannot be denied. From whom did he receive that letter informing him of the poisoning of Simeon Conoley by the candy he gave him? From Margaret E. Conoley, the beneficiary named in the policy. Is not that the truth? Now it would seem that D. A. McDougald and Margaret E. Conoley and all those who were present on that occasion, ought to have known what was the matter. The circumstances were so suspicious that, as brought out by the defendant's own counsel, when the candy was put into the hands of Mrs Wilkes, seeing the terrible effect it had had on poor Simeon, she immediately threw it into the fire.

Another remarkable circumstance: The application shows that at the time this policy was issued poor Conoley was forty-six years of age. D. A. McDougald had gone down to Mrs. Effie Conoley's, and remained there all night, with this candy in his pocket, or somewhere about his person, or under his control or charge. There was a boy there, Edwin Conoley, his first-cousin; the boy did not get a particle of the candy, as the evidence shows, not one particle; but he takes his old forty-six-year uncle off to himself and begins to feed him on candy. Strange circumstance, gentlemen of the jury, marvelously strange. The boys and the girls who were there were not allowed to taste it; if they were they have not so stated on the stand, and I presume they would if it had been given to them—they were in his behalf. The boys and girls were not permitted to taste or touch; Simeon was not permitted to take it in the presence of anybody else; he is carried off to himself by the defendant and dosed. Well, now, gentlemen of the jury, am I stating to you anything that has not been proven to you by witnesses whose character cannot be impeached, by witnesses against whose character not one word has been spoken? I ask your careful attention, gentlemen of the jury. I will be as brief as I can. Is there anything else connected with that? Let us take now the testimony of Powell Hill, a young boy living in the town of Laurinburg, a clerk in Dr. Everington's drug-store. He opens out one morning early, which is the same day, as it appears, that the defendant went to Dr. Prince and made this statement. Powell Hill opens the drug store early, the defendant comes in, he goes behind the counter, he professes to want some brandy-drops, and, in the words of the young man, he "fumbled in the box so long, and around the box there," that he, Hill, spoke to him and asked him if he could not get what he wanted. I use the witness's very

words—that he "fumbled in the box." After having called for brandy-drops, after "fumbling in the box," he says he "does not want any; believes he will get some out of the show-case." He does so. Again, not long after this, and on the morning of the same day, after this fumbling in the box, he goes in and talks to Dr. Everington; he proposes to buy brandy-drops; Everington wants to sell him a fresh box, telling him that those in the open box are stale. No, he prefers the open box, he wants stale ones, takes the box and goes back to Dr. Prince with it in the rear of the store, and calls Dr. Prince's attention to a whitish powder on the top of the candy, which proves to be strychnine. Any doubt about that, gentleman of the jury? Nobody dares question Powell Hill's testimony or his character. Nobody dares question Dr. Everington's character. Dr. Prince is unassailable. How did the poison get in there? Well, there is a lame excuse—no, I should not have said that; there is an attempt made to account for its getting in there, because of the fact that Dr. Everington did have some strychnine in the drug-store, but he tells you, gentlemen of the jury, that there are two kinds of strychhine; that there is a powdered strychnine, and there is a crystalized strychnine; one is in powder and the other in flakes; this was the powdered strychnine, and he did not have any of that kind in the store open.

Ought not that to be a sufficient answer to the charge that it got in there through the carelessness of Dr. Everington or his clerk? If it is not, however, let us go a step further. This was on Monday morning. The young man, Powell Hill, tells you that on Saturday afternoon preceding this Monday morning he sold some candy out of this box; he sold to one or more, perhaps to several parties, of it, and we never hear that any one was the least bit sick except Simeon Conoley. There seemed to be, gentlemen of the jury, a fatality attaching to everything that at that time went through the hands of D A. McDougald; the candy was converted into strychnine, the clothes were lost by him, the foot-prints were rubbed out by him, and everything that he seemed to have to do with the case went wrong. But to go back, now: what is the secret of that candy business? In the light of the testimony, what does it mean? It means just this, as I take it, according to the testimony of Dr. Prince: He had just heard that his uncle Simeon had been poisoned by some candy that he had given him. Having heard that the statement was out that he had poisoned him, he goes to work in the usual bungling way of a criminal trying to cover up his tracks. He pretends to Powell Hill that he wants to buy some of this candy; he goes and fumbles in the box and puts the powder in; going back in a short time after that he is the first man to discover that the powder is in the box; carries it to Dr. Prince and Dr. Everington so that they may see it is in there, and if afterwards the charge is brought against him that he poisoned Simeon Conoley, why he would have this to say: "I got the candy out of a box in Dr. Everington's drug-store, and I can prove by Dr. Prince and Dr. Everington that it had strychnine in it." Is it not plain? So much for that, gentlemen of the jury.

Now, am I asking you to convict this man on that evidence alone? No, I am not Let us get up a little nearer to the time of the tragedy. Let us see, gentlemen of the jury. Let us follow this man; let us follow D. A. McDougald as he went in and out, and let us endeavor, if we can, to trace him from the morning he left Laurinburg, the 21st of April, up to to-day. Let us see if we can follow him; let us see if we can keep in sight of him. He left Laurinburg on the 21st of April, the morning of the murder. Is there any doubt about that? Certainly there is not. His own counsel must concede that, because they put witnesses upon the stand to show you that he did so. We find him leaving on the morning of the murder. Now, where did he go? Let us go to the next station from Laurinburg—Maxton. Was there any doubt about his being at Maxton that morning, passing there? There is not. It is conceded on all sides that he did go from Laurinburg to Maxton. You have no doubt about that, gentlemen of the jury. As I promised to do at the outset, I will give you time, place and name of witnesses, reputable witnesses. He was at Maxton, at least got there A. J. Cottingham, a man of high character, says he came down on the train with him; Luther McCormick, a man whose character has not been impeached,

says he shook hands with him; D. E. McNair, witness for the defendant, states that he brought him from Laurinburg that morning. Now, right here, gentlemen of the jury, there is a little, just a slight, conflict of testimony. Mr. A. J. Cottingham swears that McDougald got off at Maxton; Mr. McCormick swears that he saw him there immediately after the arrival of train; Mr. McNair, on the other hand, says he took him on down to Alma, two miles below Maxton. Well, now, I argue to you that you must be satisfied, that you ought to be satisfied that he got off at Maxton. Cottingham swears to it absolutely; he has no interest in this case, near or remote; he is a salesman. McCormick swears that he got off at Maxton; he has no interest in this case, near or remote. He was keeping a boarding-house at the time, and you know that of all people in the world the hotel men in small towns most closely notice for, look at and scan the passengers arriving on the trains, and boarding-house people do the same. While I don't care how you may think about that, yet it seems to me that upon that testimony, and upon Mr. McNair's own statement, upon his report made out at the time by him, showing that there were two passengers from Laurinburg to Maxton on the train that morning, which corroborates Cottingham and McCormick, you ought to be satisfied that the defendant got off at Maxton on the morning of April 21st. Cottingham and McCormick are also corroborated by two of the defendant's witnesses, the young man, Sellers, who keeps a store at Alma, and the young man, McGirt, who works in the mills at Alma. They tell you that they saw the defendant on Wednesday, but during all the time that they had been there they had never seen him there before. Was he at Alma on Tuesday? If he was, don't you know he would have gone to his brother's house, living right there? Did he do it? He did not, or his brother, who was here in court, would have told of it. He went there Wednesday morning, gentlemen of the jury, and not Tuesday morning.

But suppose he did go there. Now, the defense have got him within two miles and a quarter—take their own testimony—have got him on Tuesday morning within two miles and a quarter of the tank, with an hour and twenty-five minutes in which to make that two miles and a quarter. Where is he next heard from? Why, he told Mr. McCormick, and that is not disputed, that he was going off on the Fayetteville train; that is not questioned. Mr. Cole, a section-master of the C. F. & Y. V., a man having no interest in this case at all, except as a good citizen, tells you that on the morning of the 21st, about 7 o'clock, a man came to where he, Cole, was, between the crossing and the tank, about a quarter of a mile from Maxton; that the schedule of the C. F. & Y. V. was 8:35 A. M. He saw the man and talked with him; the man was clean shaven, except that he wore a moustache, a light-colored moustache, as the defendant's now is and then was; that he told him his name was McDougald, and that he was from Laurinburg in Richmond county, and that his best impression is that the defendant is the man. Does anybody contradict that? Does any living mortal contradict that? That this man asked him what time the freight would come along—he was going towards Fayetteville. His reply was 8:35. The man asked if he could get on at the water-tank; he told him yes, but that he had sufficient time to go to the depot before the freight came in, and the man did board the freight at the tank. Right there, gentlemen of the jury, a little fact: It is alleged that the defendant boarded the train on the C. F. & Y. V. at the tank, on his way to the murder; where did he board the train on C. C. R. R., on his flight from the murder? At the tank also. Did not get on the train at the depot on his way out to Shandon, and did not get on the train at the depot on his way out to Oregon, but at the tank. Well, have you any doubt about who that man was, even on Mr. Cole's testimony? He says he thinks this was the man, that he told him he was the man, that he looks like him, and that he had the same package that this man was proven to have had on his way down from Laurinburg that morning Not one living, human being contradicts it; but I state further: he was seen by Thos. Smith, a colored man, a hand for Mr. Cole, who said that he had some conversation with him about the arrival of the train, which was pretty much the same as Mr. Cole's. Now, gentlemen of

the jury, he boards the train. Capt. Lockamy swears that he took on a passenger on that train on the 21st of April between 8 and 9 o'clock, who said he wanted to go to Shandon, and he paid his fare to Shandon. Is there any doubt about that? That he told the man that he could go on the passenger train, but that the reply was: "I am not in a hurry." Preferred to ride on the freight rather than on the passenger; was in no hurry; wanted to be as late getting there as possible, because he knew that his murderous work would best be done at night. According to the testimony of Capt. Lockamy he had a duster and a bundle or a valise, as was testified to by Mr. Cottingham, by Mr. McCormick, by Mr. Cole and by this colored man.

What did he do? Was he communicative? No, for he sat, in the words of Capt. Lockamy, "looking at the floor," just as you have seen him do frequently, gentlemen of the jury, during the progress of this trial. Well, now, upon that evidence you ought to be satisfied that he was the man who got on at the tank; it ought to satisfy you; they said he looked like him, dressed like him, had opportunity and time for getting there; but there is one person who swears positively that she saw him and knew him; Lizzie McCoy swears that she has known him since he was a little boy; that she saw him sitting at the tank the morning of the day that Conoley was killed. Who says that is not true? Who denies it? Who says that Lizzie McCoy, colored woman though she be, is not a woman of character? If she had not been, gentlemen of the jury—with all the searching and scouring for witnesses, bringing them from four or five counties and from two States, as the defense has done, with abundant means at their command—if she had not been a colored woman of good character, why you most certainly would have heard it. Now, is there any reasonable doubt about his being there, in the face of all this testimony? If there is, why, then, human testimony amounts to nothing.

Well, if he did get on at the tank, what became of him, and if he didn't get on at the tank, what became of him? If he was not this man who had on disguise, who was it? Truly, gentlemen of the jury, we are going back to the mythical days when a man could vanish and appear at pleasure; if he was not this man who arrives at Shandon, why, then, the story of his disappearance between Maxton and Shandon will rival any story in the "Arabian Nights Entertainment." He got on there and paid his fare to Shandon, and he went to Shandon. Now, why do I say that? Because he said he was going down that road, because he was seen to board the train, because he paid his fare to that point, and because there is no testimony that he got off this side of that town. Well, who saw him after he got to Shandon? I desire to call your attention to the testimony of Charlotte Dumas, that she saw a strange man pass her door. She was then living in the section-house. On the day Conoley was killed he passed soon after the arrival of the freight train from towards Maxton; had a duster and a gripsack, was going on the Lumberton and Carthage road towards McPhail's. Does anybody contradict her? Next seen by W. C. McPhail on the 21st of April after the arrival of Lockamy's train; a man passing up the road, wearing a long duster; his back towards him and could not see his face; thought he was a white man; had on a dove-colored duster; a medium sized man, and, as I saw him, would pass Charlotte Dumas's house. Does anybody contradict Mr. McPhail's statement? Next is Jeff Cobb, a young man living one mile from Shandon on the Lumberton and Carthage road. Now, gentlemen of the jury, notice that with each successive witness we bring him nearer and nearer to the scene of the murder. On the 21st of April, Mr. Cobb says, he was working the road, and between one and two o'clock he came out on the road, and about twenty yards above him was the man going from him. The man wore a long duster, had a budget on his shoulder, which looked like a valise or an oilcloth rolled up. He saw the man meet Henry Smith (col.); Henry Smith came on immediately to Mr. Cobb, and asked: "did you see that painted man?" Cobb says: "How do you know he was painted?" "I seen white spots on his knuckles and on back of his neck." Fannie Meares saw him, gentlemen of the jury, just below Jeff Cobb's house; she met a "curious-looking man," as she describes him; had on spectacles, had

a moustache; side-whiskers, long hair which came down. "The hair looked straight to me," she answered in reply to a question by the defense. Now: right there, remember what Mr. Jas. C. Robbins, the owner of the wig, said; he said it was a woolly wig, but he had taken a comb and combed the back of it out straight. He passed Henry Smith, and saw Mrs. Humphrey, and then went on to Neill Smith; Mr. Smith was perhaps as near or nearer than any man who saw him; he says he was within eight feet of the man as he passed; had on a long duster, a budget and a stick through it; had side-whiskers and long hair like a wig; did not speak to him; wore a broad-brimmed slouched hat, and was about the same sized man as the prisoner, and went towards Sim. Conoley's. He was next seen by John Conoley, colored, within two miles of Simeon Conoley's. After that he was seen by Sallie Wilkes, within a quarter of a mile of Simeon Conoley's.

It is charged in the description of this man passing along this road that one witness would see one thing and another another; but they agree substantially as to his general appearance, and if every little discrepancy in the testimony of a witness, or several witnesses who testify about the same thing—if every little discrepancy, even the slightest, means that the witness has not sworn truly, then the rules of evidence and the rules of common sense have been changed, and quite recently, too. Why, gentlemen of the jury, all that can be required, all that can be expected, is that witnesses will substantially agree, and that which the counsel for the defense will argue, as a reason for your not believing the testimony, is the strongest reason in the world why you should. If a failure on the part of each witness to state all that the preceding witness had testified to—if that be sufficient to displace his testimony, I can take these same rules of criticism and strike the Gospels of Matthew, Mark, Luke and John out of the Bible. Is not that so? Biblical scholars and critics give that as a strong reason for the genuineness of these books; they have not a manufactured appearance about them, but each man writes as if he were writing for himself, without reference to what the other would say. These witnesses testify as if each one of them desired to tell only what he saw, without reference to what the others saw. If they had all told identically the same story it would be evidence of the fact that they had met and compared notes.

Now, gentlemen of the jury, was this man who passed along the accused? Was it D. A. McDougald? If it was not, who was it? If it was not D. A. McDougald, where did McDougald go on that eventful day? With his high character up to that time, would not he have well shown, if he was not there, where he was? He said he could do it, and if he was not the guilty man don't you know it would have been shown? I argue to you that he was the man, because he had been accustomed to wearing a disguise, if not identical with this, similar to it; and the strange part about this is that he never commenced to wear these disguises, according to my recollection of the testimony, until after this insurance policy was issued. Then we can see him put on disguises at home, acting his part so well that those who were raised up with him could not recognize him; those who clerked in the same store with him could not recognize him; a complete success as an actor—was informed that he was, and knew that he was. I argue to you that he was the man, because of the fact that this disguised man had a wig and whiskers; side-whiskers, similar to, if not almost identical with, those the defendant borrowed of Jas. C. Robbins two or three days before the murder. Is not that true? Did he not do it? I argue to you that he was the man because of the fact—it's a small circumstance, it is true, but it is a circumstance—that when he was approached by Robbins for the return of the wig and whiskers, he promised several times after the murder to return them, and, when pressed to do so, came up with the whiskers, saying he had lost the wig. Where did he lose it? Has it ever been accounted for? I argue to you that he was the man because of the fact, gentlemen of the jury, that we have been told by the witness that at these concerts he was acting the part of an old man, and you have heard that as he came up to the scene of the murder he limped as an old man. I argue to you that he was the man because of the fact that he well knew these premises, and the

man who did the murder eviden tly knew them well. He is the guilty man because of the fact that of all t hose who have told you about the murder, he, in his statement afterwards, was able to give the most minute accounts of what occurred, even accounti ng for the secret thoughts and intents of the murderer. Let us see his own statement about it to Jas. C. Robbins on Wednesday after the mur der Said he: some one calling himself Lum Johnson—now a little circu mstance, gentlemen of the jury, a small one, but a circumstance: some one calling himself Lum Johnson—who was Lum Johnson? He was a colored man known to the defendant; Lum Johnson was no new name to the defendant; he said Lum Johnson had called his tenant out and had killed him. He told G. S. McMillan, who was bookkeeper in the same store, that some one had called out his tenant the night before, and had killed him. Two or three days after this he told Mr. McMillan that the murderer had placed himself near the path over which Conoley was accustomed to pass, and had stood there; he supposed the murderer thought that Conoley would go home that night, and that the murderer would intercept him, but that Conoley did not come home that way. He told D. D. Livingston, on the train the day he left, that it was a man supposed to be blacked who killed Simeon Conoley.

Well, now, gentlemen, the next thing after the murder, the next evidence on the part of the State, is that of Edgar Gillespie. Now, I will frankly say, so far as I am concerned, that if it depended upon the testimony of Edgar Gillespie alone I would not ask you to convict this man; I would not have you to do it; I would not consent to your doing it; I would raise my voice in earnest protest against your doing so, if it depended upon the unsupported testimony of Edgar Gillespie. If Edgar told the truth, why, that, of course, would dispose of the case; that would be the end of it. There has been testimony introduced before you showing that Edgar is not a man of good character, and upon his unsupported statement I would say let the man go. But, bad man as Edgar Gillespie was proven to be, there is one thing connected with his testimony that cannot be gotten over. Hector Gilchrist is not a man of bad character, for it was proven by Mr. Alex. McKinnon, a witness for the defendant, that Hector Gilchrist was a man of good character, and Gilchrist tells you that about four days after the commission of the murder, before McDougald's name was ever mentioned or thought of in connection with it. Edgar Gillespie told him that McDougald came to his house and washed off that night. Was Edgar Gillespie a prophet? Could he foretell that D. A. McDougald was going to be charged with this offense, and that the insurance company would have a lawyer here to prosecute him? He was the only man in the known world at that time, so far as the testimony shows, who knew that D. A. McDougald had passed along that road. Now, what are you going to do with that? Leave out the testimony of Edgar Gillespie altogether, you cannot leave out the testimony of Hector Gilchrist. But for the sake of argument leave both of these things out, and there is still overwhelming evidence against him.

The next witness, gentlemen of the jury, is Mr. W. H. Herring, of Laurinburg. They tell you that the county of Robeson is hounding this man to death—they intimate that. As a citizen of the county of Robeson I desire to cast the intimation back at them—it is not correct. The good people of the county of Robeson wish the murderer, whoever he is—whether he be high or low, rich or poor—brought to the bar of justice and punished. They have committed the care and keeping of that matter into your hands. They have said that, although law has been outraged, although the blood of this murdered man cries aloud from the ground for vengeance, yet we leave the matter in the hands of a jury of twelve good and impartial men; we will not wreak summary vengeance on the head of this guilty and most unfortunate young man. We appeal to the law of the land—we know of no higher authority than that. I call your attention to the fact that nearly all of the damaging evidence—in fact, about all of the damaging evidence—in this case against the defendant comes from his old neighbors and friends. Without their testimony he never could be convicted. Mr. Herring is a Laurinburg man, his wife and children live there; he is doing business,

bookkeeping, in Robeson county, but he goes to Laurinburg every Saturday night, returning on Monday morning; he says that he saw the defendant on the morning after the murder, Wednesday morning, at Maxton; that at 7 o'clock, at that place, defendant got on the freight train going to Alma; that, although he had known defendant before, he had to look at him awhile before he knew him; that he had a drab duster and a valise. Herring, whose character has been proven good by defendant's witnesses, swears that he saw lampblack on the back of his neck and under the eyes—lampblack or soot; that when he got off the train at Alma he hobbled like an old man; that his shoes looked like he had been walking in mud. The murderer walked in mud, whoever he was, gentlemen of the jury; from the testimony of W. S. Graham he went down to the ford, and went in the mud. The testimony of Mr. Greenwald, another traveling man, who has no connection with the case, either near or remote, is that he also saw soot or lampblack under his eyes. Now, gentlemen of the jury, how do they propose to meet that? Why, by the testimony of Capt. Powers, an engineer, who saw him on Wednesday morning, looked him in the face, and did not see anything the matter with it; by the testimony of Mr. Sellars, that he saw him a few minutes, talked with him, and did not see anything the matter with his face; by the testimony of Mr. McGirt, that he saw him a few minutes, looked him in the face, and did not see anything amiss. None of these parties were with him except for a few minutes; they don't swear that lampblack or soot was not there—they simply say they did not see it there. They did see some remarkably strange things, though. When Capt. Powers, the engineer, pulled up at Maxton early in the morning—Wednesday morning, the morning after the murder—between six and seven o'clock, he found the defendant in a crouching position on the platform of the depot, the only man visible except the depot agent. The only man to be seen in the town of Maxton at that hour of the morning was this defendant, crouched on the platform? Where had he been? Powers, as an engineer running on that road for years, testifies that he never before in his life saw him at Maxton at that hour in the morning. At least, ought he not to show where he spent the night, where he came from, and with whom he was? The witnesses Sellers and McGirt, his witnesses, who testify to seeing him at Alma on Wednesday morning early, the morning after the murder, declare that they never saw him at Alma that early in the morning, or at all, before. Strange circumstance, gentlemen.

Now, I call your attention to the testimony on that point—this is on the morning after the murder—of Mr. C. E. Crowson, who says he is a nephew of Rev. J. T. Crowson, who looks like a young man of good character, and I presume he is. He tells you, gentlemen, that he saw McDougald on Wednesday morning at Maxton; noticed how peculiarly, how strangely, the defendant acted. He went early Wednesday morning into Crowson's place, and Crowson got oranges for him twice—hungry, ravenously hungry. Crowson said: "He ate at least four of them in my presence"—ravenously hungry. "He asked me," Crowson said, "if I was ever in a condition that I wanted something, and couldn't tell what it was." Already, gentlemen of the jury, the throes of a guilty conscience were on him. I can tell you what he wanted at that time; he wanted the load of guilt off; he felt it; it was on him then, it is on him now, and it will be on him to the last day of his life. God grant that it may not be on him in the next world!

He had mud on his shoes. Is that testimony contradicted, gentlemen of the jury? Not a syllable of contradiction. The next witness that sees him is J. C. Robbins, at Laurinburg, his own friend. Robbins said: "Hallo, Dan., what makes your face so red?" Do you know what it was, gentlemen of the jury? The washing and scrubbing—you know how a man's face will look when it had been blacked, and he has had to wash and scrub to get the black off. What was his reply? Did he say: "I am sick this morning from fever, and my face is flushed?" He did not answer. He told Robbins that a tenant of his had been killed on his place. Poor old man! Poor old murdered Conoley! Going out in the goodness of his heart to do this man—

a stranger, as he thought—a kindness, the last act of his life, doing a deed of kindness, and being ruthlessly, brutally, maliciously murdered in its very performance! Poor old murdered Sim!

J. C. Robbins heard the defendant tell G. S. McMillan that he was tired —went down to Wilmington on the Tuesday night train, and came back on the next train. This is the first falsehood connected with the killing—that he had gone to Wilmington on one train and come back on the other. Tired? I guess he was tired; up all night, as he said; been on his feet all night. Well, now, gentlemen of the jury, it has been proven so clearly that he did not go to Wilmington on Tuesday and come back that I will not argue that question to you. You know that when he made that statement he uttered a falsehood. Why should he do it? Why should this man—whose character, christian character, as some of the witnesses state, had been so good before that time—why should he start out on a career of falsehood immediately after this deed was perpetrated? This, and only this: One crime always brings with it another. Commit one crime, and commit another to hide it, cover it up. Now, what did he tell Mr. McMillan? What did he tell him about it the day after the killing? He told him that he had gone to Wilmington on the freight, had come back on the passenger train that night, and remained at Maxton all night, Tuesday night. Not true. Well, did he make any other false statements? On this day (Wednesday) hear him making false statements to J. C. Robbins and G. S. McMillan. We next hear of him making a false statement over at Conoley's as to his whereabouts. He told Sallie Wilkes that he had been to Wilmington, was up all the night before, upon his feet all day Tuesday, came up from Wilmington, had some business at Maxton, and, while attending to it, got left there. Lizzie Conoley and Mr. McKinnon heard this conversation; if he had not had it with Sallie Wilkes, why, Lizzie Conoley was here in the court-room, and would have contradicted it; and he told John Wilkes substantially the same thing.

Well, let us leave that, and go on now out into the field. He is seen by John Wilkes covering up the tracks. He, M. A. McDougald and John Wilkes went out into the field to examine the tracks. While there Wilkes catches D. A. McDougald in the act of obliterating the tracks; he tells McDougald, in the presence of his father, not to wipe out those tracks—that they might be of service to somebody who would yet find the murderer. If it were not true, of course his father would have gotten on the stand and denied it—of course he would; he did not do so because he could not, because he would not tell an untruth about it—the old gentleman.

Well, we must hasten on, and we come to the clothes. You have heard a description of the clothing, and it is not necessary for me to go into that —I say only this about it: As testified to by the witnesses for the State and the defense, they were not the clothing of a day-laborer—that is conceded on all sides: a fine undershirt, probably never worn before, nice pants; and the defendant, thinking that something might perhaps be made out of that, calls Mr. McKinnon's attention to it, and wants to know if he don't think that the man who wore those pants had been plowing. "No," said Mr. McKinnon; "a man who has been plowing don't plow in that kind of pants." Wednesday the clothing were found; on Wednesday night he is at Conoley's; on Thursday the burial occurs; he is there, and has a conversation with John Currie. Says Mr. Currie: "Mr. Dan, you seem to be worried." "Yes, I was in Wilmington night before last, Tuesday; have not slept any since." Is it not true that he said so? Was it not false when he said it? "I asked him if the place did not belong to him. He said, 'yes; that his aunt Lizzie mortgaged the place, and got him to take up the mortgage, that Sim that given to Thomson in Fayetteville; that the difficulty between Sim and Moore had all been fixed up now.'" One thing, gentlemen of the jury, remarkable about this case is that every man who has been named in connection with it, except the defendant, has appeared in court, has answered all the questions about it, has shown where he was, and has been discharged. An attempt was made by the defendant to saddle the crime on Millard Moore and John Kelley. "He did not think that Millard

Moore had done it, but that he had got John Kelly to do it for him;" and here during this court he has had that man whom he charged with committing the murder, John Kelly, as a witness in his behalf. Not satisfied with the murder of his uncle, he wanted to do double murder. Says he to A. F. Bizzell: "Millard Moore will be at Duncan McBryde's to night; have picked men; you will be met." Did he think, if he could put Moore and Kelly, either or both, where he had put Simeon, that inquiry into this matter would cease, and he would escape? As a last resort, gentlemen of the jury, as a last resort, they come in here and try to show that a young man named Cole might have been the murderer—a very unfair and unjust imputation against him. Mr. Cole is sent for from Moore county; he comes at once, and shows where he was. Everybody shows but—(pointing his finger at defendant). Strange, is it not? Extremely so.

Now, gentlemen of the jury, that is Thursday after the murder. The Thursday after the murder was the day on which Conoley was buried. Follow the defendant around now. We see him again on Friday. Mark his devious path on that day. Mr. James McBryde boards the train at Maxton on Friday afternoon about 4 or 5 o'clock, the train going to Wilmington. On that train he finds the defendant, and what did he tell the defendant? He told the defendant that those clothes had been found at Campbell's Bridge, and to get them, and take care of them. Mark that, now: the first that he hears about the clothes he is told to get them and take care of them—that they might be very important evidence. What does he say? Ah! sir, his guilty conscience begins to smite him; and at once that fear which led him across the Rocky Mountains to the Pacific Ocean, and would have led him through it if he could have gone—at once it seizes him, and he says: "Can a man be convicted on circumstantial evidence?" The guilty conscience was working then. Fear had gotten hold of him. Well, follow him up now; keep on his track. He goes on to Wilmington, or, rather, Mr. McBryde leaves him on the train at Lumberton going to Wilmington. The next witness, Mr. Jas. C. Mercer, tells you, gentlemen of the jury, that as one train, the train from the west, comes into Wilmington the train going west pulls out immediately —remember that—and that on this afternoon he saw McDougald at the depot. He jumped off one train, boarded the other immediately, and went back. Why was that? For the same reason that a fox will double on his tracks:—to confuse. He told it that the day before he had been to Wilmington, and, fearing that some evidence might come up against him sometime, he thought he would go to Wilmington and right back, and in the hurry and confusion perhaps it would be forgotten that he did go on one train and come back on the other. Well, that was on Friday. What about the next day, Saturday? He goes over to Campbell's Bridge for the purpose of getting the clothes. George Blue says that the clothes were hanging up in the oil-house at Campbell's Bridge; that he, George, was at the engine, and he saw Mr. McDougald coming up. To get to him McDougald had to pass the oil-house, or did pass the oil-house, in which the clothes were hanging up. McDougald made some inquiry about the clothes; they went to the oil-house to get them, and found them gone. George testifies—and there is no contradiction of it—that just about five minutes before McDougald came there the clothes were hanging up in the house. He made inquiry about them and could not find them. Finally they looked under the house, and found them in a bundle, about six feet from where they were—evidently thrown under there hastily, evidently thrown under there by the defendant, evidently put there for the purpose of destroying this chain of evidence. Well, when they were found what was done? Why, he asked this man George Blue what he would do with them. Imagine a man of his intelligence asking George Blue what he would do with them!

Now, that was Saturday after the murder. We hear of him again on Sunday. In the conversation with him during Friday afternoon Mr. McBryde told him that Mr. McMillan had promised to get up some information, and that as soon as he did he, McBryde, would let him know, let the defendant know, the purport of it. Went to Laurinburg on Sunday and saw him; and now, gentlemen of the jury, note carefully. The Sunday after the mur-

der is the first time, as the evidence discloses, that it was brought to his attention that the man who got on at the tank was supposed to be the murderer. I repeat that Sunday after the murder was the first time that it was brought to his attention that the man who got on at the tank was supposed to be the murderer. Mr. McBryde says: "I told him that the people were pretty certain that the man who went up on the freight train Tuesday was the murderer. I, McBryde, asked if he had any further information. He says: 'yes, pa has a man spotted, but he don't want to give his name,'" and pa's man that was spotted remains unnamed to this day. Then, for the first time, gentlemen of the jury, never until he was told that this man who went up on the train was suspected, never till then do we hear him say anything about being afraid. When Mr. McBryde told him that the man who went up on the train was supposed to be the murderer, he, the defendant, then said he was afraid of his life. McBryde told him he did not think there was any danger, etc. On Wednesday he sent the note to Capt. Bizzell to lynch Moore. On the same day, Wednesday, he was with Duncan E. McBryde and with John Conoley. What did McBryde tell him? He told him that the man who got on at the tank was supposed to have been the man, and that he, McDougald had been accused of poisoning his uncle in the fall before. What did he say to McBryde? "That he could prove his whereabouts." In the name of God, has he ever done it? If he could prove his whereabouts and show that he was not on the train that day, show that he was not at Conoley's that night, show that he was anywhere in the wide world except there, why he would have saved you and all of us all this trouble and expense, and he would have saved his own people the pain, the mortification, the heart-suffering that they have undergone, and are now undergoing. If he could prove his whereabouts, as he said to McBryde that he could, how cruel to his own parents, how cruel to his own character and reputation, that he has not done so. He said that he could prove his whereabouts, that he went to Maxton. They say he did not stop there. McCormick says he did; he himself said he did; that he did go to Maxton to rent a store, but took the train back Tuesday evening to Laurinburg. The most natural thing that any man could do when charged with this offense, would be to say: "Oh, well, I was not there; I can show it." And no man, no man in this country of his character, or the character he proved himself to be, or of any other character for that matter, would be likely to disappear for twenty-four hours and not be seen by mortal man, so far as the evidence discloses, unless he was where he should not have been and intent on mischief. McBryde says: "He asked me if I did not think he had better go home, and immediately left with John Conoley," and that night the clothes mysteriously disappeared and have never been found from then till now. Strange. Passing strange.

Now, gentlemen of the jury, I don't want to attack anyone and I am not going to do it. I shall apply no harsh names to any witness, and I do not care to refer to Neill Conoley's testimony except just to say this: you remember what it was. The purpose of his testimony was to show that D. A. McDougald could not have gotten out of the house that night without waking him up. Upon cross-examination, the young man said he had been working all day, and he had slept very soundly, and did not know whether he went out or not. When he said that the importance of his testimony vanished. Strange, though, remarkably strange, that those clothes should have disappeared the very night of the day that McDougald was charged with this crime. Now, what did he say about it? Put McDougald against McDougald, and what did he say about it? Well, in the first place, were the clothes in the road cart at John Conoley's? Mr. Phillips saw Mr. McDougald in the road cart that day, and he did not show them. He asked McDougald to let him see the clothes and perhaps he would know them. McDougald refused to do so. Mr. Hodgin saw him on the same day, and told him he supposed the clothes were at Laurinburg; said he did not see them in the road cart, and that McDougald did not make any direct reply to that. What does McDougald himself say about the loss of the clothes? On the next day, which was Thursday, the day before he fled—and remem-

ber that he fled within less than forty-eight hours after he had this conversation with Duncan E. McBryde—he meets Mr. Purcell. What did he tell him? Purcell said he wanted to hear about the clothes. The defendant replied that he was notified about the clothes, that he had carried them to John Conoley's the evening before, forgot to take them out of the road cart, and they were stolen. Never had been anything stolen there before, as Neill says. The defendant was cautioned by Jim McBryde when he first heard of the clothes to take care of them, that they might be important evidence. He knew that somebody was after them at Campbell's Bridge; and yet notwithstanding all these things, which should have admonished him to be doubly careful, he says he forgot about it, and left them in the road cart all night, and that somebody stole them—that there was a crowd of men after him the night before at John Conoley's. Who composed that crowd, gentlemen of the jury? John Conoley was there at the house, his sons were there; they were here within the call of the court, and if there had been a crowd of men at John Conoley's after him, of course they would have said so; but the crowd dwindles down into an impression of Neill Conoley's, which may be either of one track or two tracks, that is, one foot or two feet.

Well, he made another false statement. That was on Thursday. Now, mind you, on Friday, the very next day, he gets on at the water-tank at Laurinburg, according to the testimony of Thos. L. McNair. D. D. Livingston, deputy sheriff of Richmond County, boards the train, sees McDougald on the train, knows there is to be a trial of this matter that day; knows that McDougald has been active in trying to fasten it on innocent men, and says to him: "Why are you not at the trial?" "Oh, I have business to attend to, and I can't go." He told him it was one of the worst murders he had ever heard of. The defendant replied that he had been to John Conoley's a night or two ago, and that somebody had tried to cut him off from the house. Any evidence of that? Another falsehood. Said Livingston: "I understand that you found the clothes." "Yes," replied the defendant, "they are in the office of my attorney, Mr. John D. Shaw, Jr., and will be at the trial." Now, upon that point Sheriff Smith was put on the stand; says he had a conversation with Mr Livingston, and Mr. Livingston told him that McDougald said the clothes would be at the trial. I don't care whether he said they were at the office of his attorney or not; if he said they would be at the trial that day he said what he knew was false, because he said they had been stolen the night before. Now, gentlemen of the jury, Mr. Livingston is a Richmond County man; nearly all of these witnesses who were introduced are friends and acquaintances. Rev. J. T. Lyon, Methodist minister of high character, who lived at Laurinburg about four years, and knew McDougald intimately, saw him on the train Friday; got on at Laurel Hill, and further on saw McDougald; walked up and said, "hallo, Dan!"—of course not suspecting anything—"where are you running away to?" It stuck; it was an arrow sent at random that pierced. Rev. Mr. Lyon did not think that in truth and in fact he was running away; he seemed offended, and Mr. Lyon apologized. Now, what did he say about the murder? Another thing: "I told him," says Mr Lyon, "that I heard it was a white man disguised as a negro who did the killing;" he said yes—and I want you to mark this now—that was true; that his aunt and a little boy said that from the best they could tell it was a white man disguised. Anybody else spoken of as having seen him? Nobody but his aunt and a little boy, and they could tell it was a white man disguised as a negro, and that was all they could tell. Well, now, that came out in evidence; his aunt and little boy were here, here in his interest and behalf, and were not put on the stand.

And now, gentlemen of the jury, I regret very much the necessity, I regret exceedingly much the necessity, that I am put to. I wish, I truly wish, that it was not necessary for me to say what I must. They try to meet this, gentlemen of the jury, by the declarations of this old lady—and I sympathize with her, I am sorry for her, I am truly sorry for her; I would not say anything against her, gentlemen of the jury. I know how she feels; if she had seen her grandson in the flesh, with no disguise on that night, she could not have believed that he would do it. I hope that she may never believe it.

She is near the grave now, and I trust that she may live under the delusion that she is under now. But this much, gentlemen of the jury, which makes it exceedingly suspicious. I shall not say anything against the old woman, God bless her! If she has done anything intentionally wrong, I do not say that she has, but if she has done anything intentionally wrong, I ask, I hope, I pray, that it may be forgiven her. She wants to shield her grandson if she can—perfectly natural. But what do you say of a grandson who, in order to shield himself, would put his poor old grandmother in the state in which he has left her? Gentlemen of the jury, a true man would have been led to the scaffold and hung, would have died forty deaths, before having done that. Many a man has died for the truth, to preserve the truth. Now, gentlemen of the jury, mind you now, he told Mr. Lyon himself that it was Margaret Conoley and the little boy who saw the disguised man, and that it was a white man disguised. Of course if his grandmother had known all she says she knows about it at the time, it being so much more than his aunt and the little boy seem to have known, why, of course, he would have adopted her statement, he would have said what grandmother saw; but grandmother is not mentioned once; "aunt and the little boy said from the best they could see," evidently they could not tell very well in the dark who it was, but from "the best they could see it was a white man disguised as a negro." It was in evidence that Margaret Conoley, the daughter of the old lady, says she "glimpsed the man." They were here, gentlemen of the jury. Gentlemen of the jury, they were not put on the stand, but they took the poor, old, unfortunate, decrepit lady and put her on. Well, I shall not speak of the contradiction, gentlemen, I shall not speak of what she said, or what was said in her presence by Dr. Lewis, the coroner of the county, who was there investigating this matter, trying to get up all the testimony he could. He said in her presence he wanted to get all the testimony he could get, but did not swear the old lady, because she did not profess the day after the murder to know anything about it. She told him, D. B. McLauchlin and Mr. Edward McNeill, that she did not know. Take her own statement, and, while she may believe—in the weakness and feebleness of intellect incident to her advanced age—while she may believe every word that she testified, honest, common sense is against it. The old lady said she could see the man; did not know what kind of coat he had on; did not know what kind of beard he had, or whether he had one or not; yet she, sitting and glimpsing him, could tell that it was not the defendant. Was not expecting the defendant there; would know him in the moonlight in disguise if it was he; could tell it was not he; when, in the bright blaze of lamplight, in his own town, those who were there could not recognize him, and when he knew they could not, when he was told of it.

Now, gentlemen of the jury, I must hasten on. Why did he go away? Well, we have his statement about that also; he told Col. E. F. McRae, a man of the highest character, as proven by the witnesses on all sides, a man that perhaps some of you know, he did not tell him that he was afraid of being lynched; not a word of that; that was not his statement made to his father. I don't know what he told his father, but I judge it was an untruth; if it had not been his father would have been put on the stand to corroborate what he was saying, but he told his father, according to the statement made to McRae, that D. E. McBryde said that if he did not mind Millard Moore would fasten this thing on him, and knowing the character of Millard Moore—listen to the lameness and impotency of his excuse—knowing the character of Millard Moore, "rather than get into a lawsuit with that man, he would leave the country." Did you ever know a man to run away to Oregon to keep from getting into a law suit? Have you ever heard before that a man of high character; a man with his influence at that time, who, with truth and justice on his side, could have crushed Millard Moore into the earth—have you ever heard of his running away to Oregon to keep from having a law suit with anyone? He was perfectly willing to have a law suit with Millard Moore until Jim McBryde and D. E. McBryde told him what they did about himself. He was perfectly willing to dispose of poor Millard Moore out of the way without any law suit, and if it had not been for

the hand of Providence interfering, he, perhaps, would have had poor Millard swung up. He says his father advised him not to do it—what any sensible man would have told him—not to run away, not to do any such thing. He said he then concluded to go to Rockingham and get a lawyer, and when the train came along, without saying a word to anybody—did not tell his father where he was going; in fact did not tell anyone—he concluded that he would get aboard. Before the conductor came around he concluded not to get off at Rockingham, but to go on to Charlotte; he concluded again that he would not stop, but, rather than have a law suit with Millard Moore, he would run away; went from Charlotte to St. Louis. You would think he would be safe from poor Millard in St. Louis; but he went from Charlotte to St. Louis, Kansas City, and Washington, Kansas, where he stayed two weeks and got work in a nursery; thence to Portland, and Salem, Oregon, where he sold spectacles for two or three weeks, and then got a job on the railroad, where he resided and was arrested. Was Millard Moore after him all that time? No, gentlemen of the jury, it was the spectre of poor, murdered Simeon Conoley that was after him, and it pursues him now in his waking dreams, and it will pursue him to the last day of his life. Never, nevermore will he shake it from him. He is safe from Millard Moore; he is safe from John Kelly; he is safe, as the sequel has shown, from lynching; but he is not safe from poor, murdered Simeon Conoley.

Now, gentlemen of the jury, the whole purpose of the argument for the defense, the only effect that it can have, I make bold to say, is to confuse your minds. I do not mean any reflection on the counsel for the defendant; they have the right to do so, a legitimate right, but the whole purpose of it is not to prove—after all this damaging testimony—that this man is not guilty, but to confuse your minds a little as we go along. Take the uncontradicted testimony, and it wraps this man so tightly in its folds that he will never succeed in breaking loose from it. Lynch him! Did he run away for that? He said he did not. Nothing was ever heard of that until after he left, and nothing was ever heard of it then, according to the testimony of his witness Hargrove; nothing was heard of it then, except among his friends—that was his own witness's testimony. Friends going to lynch him! Anybody going to lynch him at Laurinburg? Why, of course not. Never heard of it until after he fled. No, gentlemen of the jury, flight itself would not be sufficient to convict this man—not that circumstance in itself, but with all those other things unexplained by him, not explained by anybody—add that to the rest, gentlemen of the jury, put it on top of all the rest, and the pyramid of guilt is complete; the pyramid is complete, and the sands of quibbling may blow and blow, but there it stands, there it stands. Fled because he was guilty. Flight did not save him, though, gentlemen of the jury; flight cannot save, flight cannot ease the pangs of a guilty conscience. He might have gone and gone, and all the time, as the evidence shows, he was saying to himself:

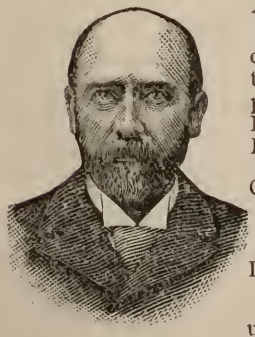
> "Me miserable! Which way shall I fly?
> Infinite wrath and infinite despair,
> Which way I fly is Hell, myself am Hell."

Gentlemen of the jury, virtue is bold, nothing fearful, or, as we have it in Holy Writ: "The wicked flee when no man pursueth, but the righteous are as bold as a lion." In the character that this man sustained up to the time of the commission of the offense, the evidence shows, gentlemen of the jury, that it was another case of Dr. Jekel and Mr. Hyde—that he was one thing to all his acquaintances and friends, but that when the real self came out it was totally different; that to the public gaze he was a high-toned, Christian gentleman; that within his heart he was a scheming, plotting, planning, avaricious murderer. Character, good character, is greatly desired, more to be prized than great riches. But of course character ought not to shield and will not shield any guilty man. The higher the eminence, gentlemen of the jury, the easier it will be to fall and the greater the fall. If he had been some debased criminal, raised in the haunts of vice, knowing naught from the cradle but to do evil, and had been guilty of this offense, then it may well have

been said that society and Christian people had some hand in it, that they did not attempt to raise him up from the position in which he was born; but born as he was, reared as he was, with all the advantages and opportunities that he had, and then to deceive and then to murder! Why, it ought to make the condemnation greater. He is not the first one, gentlemen of the jury, who ever fell from high position. He is not the last. The first recorded instance, as you all know, was the fall of Satan, an angel of light, from Heaven to the lowest pits of Hell; that was the first recorded instance, and I am sorry to say that he has had many imitators since then. Many have followed in his track. No, gentlemen of the jury, we are told that the spirits damned do not lose all of their virtues, "lest bad men should boast their specious deeds on earth"—just as this man is doing.

Now, gentlemen of the jury, my labors in this case are about to conclude. I thank you for the very patient attention that you have given me, and I trust that when you shall have rendered your verdict that it will be—I am sure that it will be—a conscientious one. I am sure, whatever it will be, that you will take this testimony, that you will weigh it well and that you will render your verdict according to the law and the evidence. If you will do that all is well, and I believe you will do it. I do not know any of you, gentlemen of the jury, but I believe you will do your duty. In what I may have said, and in what I have said, I want to say that I entertain no malice, no ill-will, towards this defendant, none whatever. I simply ask for justice, and if justice carries him out into the sunshine, to liberty, to freedom again, why then let him go. But if, on the other hand, it carries him into the shadow of the gallows, why, with sorrowful mind and with sorrowful feelings, we will go, regretting the necessity for such action, deploring it, and still gentlemen of the jury, resolved to do our duty at all hazards. This whole evidence, the whole evidence, gentlemen of the jury, shows plainly that, whatever be the result, the defendant has brought it upon himself.

Hon. J. C. MacRae—for the defense.



Hon. J. C. MacRae, of Fayetteville, N. C.

May it please your Honor:

It is proper that at the outset, at the opening of the case for the defendant, we should present to the court those prayers for special instruction which we deem pertinent to the issue that is now presented to the jury. I will read those prayers and hand them up to your Honor, which read as follows:

Cumberland Superior Court—Nov'r Term, 1891.

State *vs.* D. A. McDougald. } Prisoner's Prayers for Special Instructions.

1. This is a case in which the State relies entirely upon circumstantial evidence and evidence of identity to satisfy the jury of the truth of the charge made in the bill of indictment:

2. Every material circumstance relied upon by the State as proof of the guilt of the prisoner must be proven beyond a reasonable doubt to the satisfaction of the jury.

3. All of the circumstances so proven, if any have been proven, must, taken together, produce such a conviction in the minds of the jury of the guilt of the prisoner as shall remove every reasonable doubt of his guilt, and leave no other way of accounting for the death of the deceased but that he was murdered by the prisoner.

4. Upon the whole testimony, if there shall be any reasonable hypothesis consistent with the prisoner's innocence, the jury must render a verdict

of not guilty. The facts, their relations, connections and combinations should be natural, reasonable, clear and satisfactory. When such evidence is relied upon to convict it should be clear and convincing and conclusive in its connections and combinations, excluding all rational doubt as to the prisoner's guilt.—State *vs.* Brockville, 106.

5 In this case it is not required of the prisoner to prove his innocence, the entire burden of proof of guilt is upon the State.

6. One of the essential elements necessary to establish proof of guilt in cases of circumstantial evidence is the motive which must have prompted the accused to the commission of the crime alleged.

7. In this case the evidence fails to establish satisfactory proof of a motive on the part of the prisoner to commit the crime with which he is charged.

8. On the trial of this action the prisoner is not a competent witness except at his own request, and his failure to make such request shall not create any presumption against him, and shall not be permitted to prejudice his case in the hands of the jury.

9. The defendant in an indictment has always a right to give his good character in evidence, and in cases of circumstantial evidence and on questions of identity, as in this case, it is the duty of the jury carefully to consider such testimony in his favor in arriving at their conclusions as to his guilt or innocence.—State *vs.* Henry, 5 Jones, 65; State *vs.* Johnson, 1st Winston, 151; Wharton's Cr. Law, 7th ed., 636.

GENTLEMEN OF THE JURY: I bring to you this morning no glowing rhetorical periods, with which to charm your fancy. I come to stand before the jury as man to man and breast to breast and to discuss under the pure light of reason the facts and circumstances which have been presented to you. It has been a long time, gentlemen of the jury, since I have had the privilege of appearing before such a body in this county in a capital case. Like my friend, who has just taken his seat, I congratulate you,—I would say I congratulate myself that on this occasion I am able to bring the case before twelve men who are unbiased, who are unacquainted even with the man that they have to try, who have nothing but reason and conscience to guide them, and who know how to do their duty as conscience may direct.

In all the line of celebrated causes which have been reported in the books, we have never had a more remarkable one than this which now takes your attention. A young man of Richmond, of the highest character, who stood as any of us might be proud to stand before his fellows, is indicted in the county of Robeson for an unnatural crime, the taking of the life of his own near relation, under circumstances which afford no palliation. He is indicted in the county of Robeson and he comes to the people of Cumberland to give him a fair and impartial trial, and men who so come never fail.

Of the unhappy death of Simeon Conoley there can be no doubt, there is no question, but on that fateful night of the 21st of April of the present year he was brutally murdered. His voice is closed, no eye saw the dreadful deed and no tongue can tell who did it. The State is assisted by the New York Mutual Life Insurance Company. As if the paraphernalia of the law of our native State was not enough; as if our good old mother was too slow to avenge the death of her sons, this foreign corporation comes with all its detective skill to aid us in the investigation. And now, gentlemen, we will consider what you know to be a case of circumstantial evidence; that is, the State with its able coadjutors proposes to prove, and you have heard how my distinguished and learned friend who has just addressed you, upon the line of facts and circumstances which it contends must satisfy you beyond a reasonable doubt that the prisoner at the bar is guilty of the henious crime with which he was charged. The State forms its theory; you have heard it fully developed, ably developed, intellectually developed, and you understand now the theory of the State. In trying a case of this kind, gentlemen, you find that the bed rock upon which every building is reared,

and the first, always the first link in the chain of circumstantial evidence, to change the figure, is *the motive*, which is supposed to have actuated the murderer in the commission of the crime with which he is charged. Without motive, the man who did this deed would be a raving maniac, and so unles the State has shown you the motive, it has taken away the very foundation stone upon which it attempts to erect this edifice. Now, what is the motive, gentlemen of the jury? I shall answer the remark of my friend, as he passed on, and he tells you that the motive in this case was that the prisoner at the bar might reap the benefit of an insurance policy which he caused to be taken out upon the life of him who is now deceased. He tells you, starting with Dr. Hamar, that the prisoner at the bar brought the deceased to him to apply for insurance. But is that the first startling point in this case? If he has left out, as I think I shall be able to show you, gentlemen of the jury, before I have concluded, some most important circumstances as he ran along the line of his argument, I shall beg permission to call your attention to them in order to show that the edifice they must erect is not formed, as he would have you to believe. The first testimony with regard to this matter, the first starting point, gentlemen, is not that the prisoner at the bar carried the deceased to Dr. Hamar, examining physician, to make his application to stand his examination, but it is that Mr. Roper—and I refer you to his testimony—the insurance agent from South Carolina, in company with Mr. Killebrew, an insurance agent who was then in the employ of the same company, the New York Mutual Life Insurance Company, came to Laurinburg, soliciting business, and they went to the prisoner at the bar, then in good standing in the town of Laurinburg, and solicited business at his hands. The beginning did not proceed at all from the prisoner at the bar, but they named the man. Mr. Roper told him that he understood that Mr. Simeon Conoley desired to take out a policy of life insurance and had been talking to some other agent about it, and he wanted the influence of the prisoner at the bar, to enable him to get the business for him. He solicited it, and so far as the evidence in this case would throw any light upon it, it was the insurance agent who solicited the business at the hands of the prisoner at the bar, instead of the prisoner having come to the examiner and brought the deceased with him. This may seem to be a small fact, a slight circumstance, but I would have you see, as I have no doubt you see already, that with the ingenuity, not of ordinary skill, but with the fine Italian hand of detective work, they have attempted to bring in the slightest and most unimportant, the most trivial circumstances, to cast clouds of suspicion upon the prisoner at the bar; therefore we must go along taking these circumstances, and watch them and sift them as wheat, that we may understand their purport and their relation to the matter which we have in hand.

Why, gentlemen of the jury, for whom was this policy of insurance taken out? Was it for the benefit of the prisoner at the bar? No. Was it for the benefit of his father and mother? No. Was it for the benefit of any one over whom he was supposed to have had peculiar influence? Not a word of that. Scarcely a whisper of it; simply a breath from my learned and ingenious friend, and scarcely that; and now they would have you to believe that the motive which actuated the prisoner at the bar in taking the life, as they say, of his own uncle, was for the purpose of securing a life insurance policy in behalf of some one else; in behalf of some one who had relatives living, a mother living, brother living, sisters living, son living, all of whom would have become distributees, as the nearest of kin, before one cent would have reached the prisoner at the bar. They say that he furnished the money. Did he furnish the money? All they know, gentlemen, is that the insurance agents went to him with the policy, that he acted as the friend of his uncle who desired to be insured, and that through him they procured the money to pay the premium, $239. We must take it all: we cannot take out one sentence in a postal card or one sentence in a conversation, and leave out the rest. Take all or take none; he said to them that his uncle had made arrangements with him—requested him to make this payment of the first premium. Oh, but the uncle was a poor man. Several witnesses have been introduced for the purpose of convincing you that he

was unable to take out such a policy of insurance. I would answer you, gentlemen, that men under his circumstances are the very ones who are most desirous to put themselves in that condition, that they may, if they live to an advanced age—for you remember that this policy was a twenty-year policy—so if they should live to an advanced age, when their physical faculties fail, and they are unable further to support themselves, that they may have that which would give them rest here in their old age. You know that the country is filled with insurance agents, representing the interests of different companies. You know the persuasiveness with which they approach us, and you know the influence which they have over us, and how we are anxious to protect ourselves in this way; and what is more natural than that Mr. Simeon Conoley, in the fullness of his strength, as he was then, should wish to protect himself. I believe it has been whispered—I forget whether it is in evidence or not—that he contemplated marriage at the time. If it is not in the evidence, there has been so much, gentlemen, which has been said of this case, so many whispers, so many reports, so much which may influence the public mind against this unfortunate man, that it is hard to keep along the line of the evidence.

But that is not all. This foundation stone is two-sided. Upon it is chiseled the insurance scheme; upon the other side it is said that he claimed the land and the farm and the property there, and that he wanted to get old Simeon Conoley out of the way that he might be sole owner of all that property. There is no evidence, gentlemen, that the property upon which they lived was the property of Simeon Conoley. There is not a word, not a deed, not a writing, nothing to show you that it was; on the contrary it appears to us that it must have been the property of the mother, the old lady, Mrs. Effie Conoley, whose home it was, and who lived there for many years. There is no evidence, then, that he would have been benefitted in the slightest, because, if it had been the property of Simeon Conoley's mother, why, there were all her children, who would have inherited it before he did; if it had been the property of Simeon Conoley himself, it would have been a long way down the line before this man would have been entitled to an interest in it.

But they say he called him "my tenant," that he spoke of it as "my property." They spoke of the Thompson mortgage as having been given; that was not given by Simeon Conoley; according to the testimony of my learned friend who has just addressed you, it was a mortgage made by Elizabeth; it had been taken up for her benefit, and we do not know how much it was, they did not favor us with a sight of it; they had the records of the County of Cumberland beneath their feet, and they might have shown us the whole transaction, whether that mortgage had been satisfied or not, but they did not choose to do it, and they put their second theory simply upon the ground that he called it his property and that he paid the mortgage upon that land. Why, gentlemen, how often does a young man in business in town speak of my tenant, my property, when really and truly he is representing another. Have not you heard the clerks in a store, if you were trading, say, "I have not this goods to sell;" "I have not that piece of goods that you want to-day; I am sorry that my stock is so low in that." Have you not heard men who are in the habit of furnishing supplies to the farmers in the country speak of "my tenants?" It has got to be a word which is often used by persons who are not the owners and I trust never will be the owners of the property. Still, he says "my tenant;" "my land that I am running out there;" and upon this idle expression they would have you to fasten the halter around the neck of this innocent man. What would have been the consequence, gentlemen, under these circumstances had he taken the life of Simeon Conoley? Was not he already kind and liberal to them, assisting them in running the farm, furnishing them provisions, mules and guano to make their crops? He had a man there to help him; he had a man there to take care of the crop and to run the farm, and what would have been the consequence of taking the life of Simeon Conoley but to have thrown that family the more helplessly upon his hands, and to have required him to employ some one else, as he did the moment he heard of

the death of his uncle, when he went there to make arrangements to take care of the family, and employed others to go there and take the place of him who was gone. What benefit was it, gentlemen of the jury? How could he have been benefitted by the death of this man of his own blood? Fine spun theories are not what we seek when the life of a man is at stake. Facts, circumstances, links in a chain which have not a flaw in them, and which must put guilt upon the prisoner, are all that we can handle when we investigate this momentous question.

See how they catch at every little straw which the wind may blow along! Here under the signature of D. A. McDougald is the damning fact which is to commit him to the gallows and a felon's grave. How it would have pleased them to have taken out one sentence, gentlemen of the jury. "You know how they all are, you can fool them to death," reads the letter written on July 27, 1889, to the Justice of the Peace who lived down in that country and who knew something about the troubles which he had with one Millard Moore. "Dear Sir: Mr. Moore has had Simeon and myself warranted for trespass on ten acres of land. I went and examined and found it was a trespass of about a dozen boxes, and I settled it with him by paying $5 cost. The main thing that I wanted to ask you is this: Moore claims a deed for all the land. Do you know of such a paper given by Simeon or any of them? I think that it is all bosh about such a deed, and they all deny giving such a deed; but you know how they all are, you could fool them to death."

If it were not that it is not the place to deal in anything but the most serious matter, I would feel like going back to tell you of the trial of Mr. Pickwick for a breach of promise of marriage with Mrs. Bardell, and the notes which he had written to her; among other damning evidence against him they were going to show how affectionate he had been to her, one time he wrote to her, "Dear Mrs. B., chops and tomato sauce;" he was coming home to dinner that day, and he wanted to tell her what to have, and if you could read the eloquent language of the learned counsel who rang the changes upon these words, you may be prepared to hear him equally so when he wrote under another date, "never mind about the warming pan." What has this letter got to do with this charge?

Now, is it necessary that I should say anything more to you about this matter? They brought it down to the insurance policy; that is the heart of the motive, the insurance policy and the claim that he wanted the property, in both of which I trust that I have been able to show you that there was not a sufficient motive which might have caused this man to perpetrate such a devilish act. Now, a large portion of the balance of the argument and of the theory of the State is based upon the doctrine or theory of *opportunity*. They say that this defendant had opportunity to commit this crime and that they have fully proved it. It is one of the most extraordinary theories, one of the most unnatural, one of the most improbable. If you will take it now and strip it of the verbiage, strip it of all the eloquence, magnicent language and the flowing periods of the distinguished gentleman who has so vividly portrayed the whole thing before your minds, I think you will find that you have the most absurd theory of a crime that ever has been made in a court of justice. Why, if the brightest of the detective story tellers, if Rider Haggard himself, or Stevenson, or any of those writers of romance, should construct such a plot as this the State wants you to believe, it would ruin his reputation as a novelist for the rest of his life. It is entirely improbable.

Let us just run over it a moment. They say that this man is a murderer, the murderer of his uncle. They say that on the morning of the 21st of April, openly, in the light of day, in the gray dawn of morning it was, and the day was coming on, that he went down to the water-tank and up to the public depot in the town of Laurinburg and that he went and took his seat;—I will come to the dusters and the boxes and the valises and the oil-cloths, all those things directly—but there, with Mr. Cottingham and the conductor and all those men who were on the car, he took his seat and talked with one and another down to the town of Maxton; that he got off the train,

shook hands with Mr. Luther McCormick, told him that he was going on up the Fayetteville road, that he walked out to the water-tank some three hundred yards away, that he proclaimed his name to all who were there, that he went from there and got upon the train at an unusual place, that he passed the town of Red Springs, which was almost equally as near to the place where the murder was committed as Shandon; that he went on to the town of Shandon, that in the broad light of day he got off and walked by the old woman Dumas's and under the window of Mr. McPhail, the officer in charge of the railroad depot; that all this time he was a nice looking young man covered with a duster of as many colors as Joseph's coat, that with this duster of many colors he walked along there. What time did he start along the road from Shandon, according to their theory?—from the depot on the C. F. & Y. V. R. R. to one of the largest mills in the county, a road that was traveled all the time by men and women, a road both sides of which were inhabited, on each side of which were houses; that he went along on that road, this nice looking gentleman, with the bland, kind features and innocent countenance, as he passed the old lady Dumas, putting himself where he could be seen by every one and marching out upon the road; and now, after that in a moment, in the twinkling of an eye, without a place to arrange it, there was a sudden, wonderful transformation; presto, change; and within a mile, within less than a mile of this place he became an old man with whiskers, a colored man so black that he shines more than any blackness shone before; that he was thoroughly disguised I ask you, gentlemen, and I am not talking now to excite anything but your most serious attention, I want to know when he made that change. If it was the man that they say got off that train, a nice looking white man, and got on that road, I want to ask you to consider that question, when did he make that change? I am arguing the case sooner than I expected, I was just going to give you the theory of the State about it, to show you how extraordinary it is that that man in a single instant, without time for preparation—some of you know how much trouble it takes to blacken a man and disguise him and change his whole appearance, so that no one will know him—and they want you to believe that in a moment all that was accomplished on that open road, and that then a person, for we do not deny that a person of singular appearance went down that road that day; that then a person went down that road, meeting people at every step, and still so badly disguised that they could tell he was a painted man.

Well, that is not all. Proceeding with the theory, the next thing is, that after having accomplished this most cruel and brutal murder, that he walked some eight miles through swamps, across runs, where he could have washed himself with perfect ease—you remember it was a beautiful moonlight night, bright as day,—where he could have gone and taken off every stain that was upon him, where he could have hidden those clothes so that they never could have been found till judgment day, where he could have so regained his personal appearance that he might become as he always was, and so make his appearance among men; they would have you believe that he passed all these opportunities and that he went to one of the most public places in the county of Robeson, to Campbell's Bridge, where the rafts are brought, where the raft hands come, where there is a large mill, a saw mill in operation, and that there, instead of even then putting these evidences of his guilt in the water and under the water, that he carefully lays them down upon a bank in such a place that the first man who came along there after daylight could not but see them, take them and make proclamation that he found them. These things, if done by a man in his right senses, must show some evidences of mentality about them, must show that he at least knew what he was doing and could understand the consequences of his act; and so they would have you to believe that this man brought those clothes there, that clothing of which you have heard so much and of which you will hear so much, and laid them down at Campbell's Bridge where the first man who came along could see them; and is that all? No, gentlemen, he retained the black upon his face still after he had taken off all else, and he goes and searches out the house of a man whom he knew and who knew

him and had known him for many years, Edgar Gillespie, and that he there, after "clever daylight," calls for a bowl of water and towel and soap, and that he washes himself there and reveals himself to Edgar Gillespie, and that he did not even thank him for the soap, water and towel, but just said "good-bye" and walked off. Well, I am glad that my friend did not insist upon your believing the testimony of Edgar Gillespie; even he, with all the ingenuity with which he has been able to weave this mesh around the prisoner, could not ask you to call it a thread in the mesh which he wove around him—so Edgar Gillespie was set aside and placed in a corner, along with Mr. Phillips, those two who were brought as the most important witnesses for the State, having absolutely failed in the proof of the assertion that they attempted to make. Now, is not this unnatural? Is not it improbable? Is not it such a story that no sane man can believe?

Why, gentlemen, in trying a case of circumstantial evidence, as you know very well, it is made up of separate facts and circumstances, and we have to try each one of those facts and circumstances, just exactly like we are trying the main issue in the case, because upon their truth or falsity, upon the question whether they have been proven to the absolute satisfaction of the jury, rests the guilt or innocence of the prisoner at the bar; and so we have to take up each one of those, and when they come to show you this walk which the murderer took and to bring him up before Edgar Gillespie, they utterly fail, telling you such an improbable story that you cannot believe it, beside the crushing testimony which we have brought and which I shall refer to a little later; and then they carry him after broad daylight to the town of Maxton, with *red* mud on his shoes; they carry him to the town of Maxton, gentlemen, after clever daylight, with streaks upon his face; they make him travel that road from four miles along from Campbell's Bridge to the town of Maxton, and they can not bring a soul who saw him all that distance; if that were true, if it were true that the man committing that deed went down to Campbell's Bridge and laid those clothes where they could be seen by all, that he went up to the house of this man and washed himself and revealed himself, why, gentlemen of the jury, when he washed that soot off his face and revealed his natural features to Edgar Gillespie, it would have been the face of a howling madman; no sensible man, no man attempting to flee from the consequences of his crime, would ever have done it.

[At this point His Honor ordered a recess for dinner, after which Judge MacRae continued as fellows:]

Gentlemen of the jury, before the dinner recess I had shown you the utter fallacy of the theory of motive; I had enabled you to dispose of, in your mind, the foundation stone upon which they have erected this edifice, in which they charge guilt upon the prisoner. I had called your attention further to the extraordinary and the unnatural and the improbable theory which they have advanced with regard to the acts of the prisoner at the bar from the time he left his home on the morning of the 21st until the commission of this act. I shall have now to deal more in the minutiæ of the case, and will follow the example of my brother in going over the testimony which has been presented to you; I may be somewhat tedious to you, gentlemen, though I think not, under the circumstances; if I am you must pardon me, gentlemen; I stand for the life of a man, I stand for the happiness of a family, I stand for the good name of one to whom it is more precious than his life. Let us take these witnesses, gentlemen, as they come along.

The first fact, the first thing that stands out in this case, as we go along—and I must call your attention to these small points in order that you may grasp the whole matter in your minds and consider it all—is the duster with which they said he was clad. There is no doubt about his having left the town of Laurinburg that morning, but the State and prosecution labor heavily to put upon him a duster as a means of identification, as an unusual circumstance at this season of the year, the 21st of April; but the prosecution broke down on that theory by the very first witness which they introduced—Mr. Cottingham, who swore they all had on dusters. I call your attention to this testimony, and, like my brother, if I misquote the testimony, I assure

you it will not be because I wish to do so. Now, Mr. Cottingham said that all wore dusters, and he said "I had on one myself." This was a remarkable duster, gentlemen, as I told you, resembling the coat of many colors; according to Phillips, it was a mud-colored duster; according to Charlotte Dumas, it was a light looking duster; according to Mr. McPhail, it was dove-colored; according to Fannie Mears, it was a long duster, and there the specks appear; and some one, whom I have forgotten, said it was a bright salmon-colored duster. This is not for the purpose of showing that there was no duster there, but to show you how fallible all human testimony is; if you had heard as many cases in court as some of us have of circumstantial evidence, with regard to that point of minor detail, you would not have been particularly struck with that illustration of my brother about the gospels; it comes down from the old books, and is used in every case of this kind where there is difference in the testimony.

Now, let us go a little further, gentlemen, about what he had with him. Well, according to Mr. Cottingham, he carried a satchel; according to Mr. Luther McCormick, he had a black satchel and two or three newspaper bundles; according to Mr. Cole, he had a valise or a bundle, neither a satchel or an oil-cloth; according to Jim Smith, he had an oil-cloth, and no paper bundle; according to another witness, he had a valise or a grip; according to Capt. Lockamy, he had some sort of bundle with a duster thrown over it; according to Lizzie McCoy, he did not have anything; according to Charlotte Dumas, he had grip sack strapped across his shoulder; according to Mr. McPhail, he was not certain about his having anything; according to Jeff Cobb, this man that appeared on the road was a different man from the prisoner, he had a valise and oil-cloth rolled up on his shoulder; according to Fannie Mears, there was a black valise on his shoulder; according to Henry Smith, an oil-cloth; according to Mrs. Humphrey, there was some sort of a bag on his back tied in an oil-cloth; according to J. C. Conoley, there was an oil-cloth folded up and strapped across his back. Gentlemen, who identified him at the water-tank, three hundred yards from the town of Maxton? Who identified him? Mr. Cole does not identify him; he saw a man there on the morning of the 21st of April, four hundred yards north of the crossing, about a-quarter of a mile from Maxton. He says "a man came there; a clean shaven man except moustache; I do not know who it was." You know how rumors can influence the memory of a man, how opinions grow upon a man as things are talked about, how that which was but a small circumstance becomes a large thing, how a little cloud no bigger than your hand overspreads the horizon, and the rain falls; this gentleman says that but for what he has heard since, the rumors, he never would have identified him as the same man, and he cannot do it now. Tom Phillips does. Mr. Phillips says that he knew him, that he said to him, "hello, Mack, what are you doing here?" and that he told him. But, unfortunately for Mr. Phillips, he was not there; the records show he was not there; the telegraph operators show he was not there; the yard-master of Fayetteville depot shows that he was not there; the master-mechanic of the shops here shows that he was not there; and he was almost willing to admit it himself when he came back on the stand, but, in order to leave some kind of an impression, do you remember what he said, gentlemen? He said that the reason he came to notice him then was because of his unusually shabby appearance; that he took him for a tramp. Every other witness testified that the man was dressed with his usual neatness, and that there was no evidence of anything of the kind. So that disposes of Mr. Phillips, the only man who identifies him on that occasion. And while I am on that subject I will say that he saw him at a distance of four hundred yards beyond Red Springs, and when it would have been impossible to identify him if he had been there, standing on the front of the caboose, he said, just as the train drove up to Red Springs, when one of the witnesses here yesterday afternoon said that they measured the distance from the place which Phillips spoke of, and it was four hundred yards from the depot at Red Springs.

Capt. Lockamy does not identify him; he says that a man got on the train, but he never has said that it was this defendant. Mr. Rufus DeVane,

gentlemen, was a State's witness. You heard us ask his Honor to let us put in evidence the subpœnas for witnesses, and you heard some objection and some discussion as to what we wanted to put in a lot of subpœnas for witnesses for. I wish to show you, gentlemen, that Mr. Rufus DeVane, known to you all, who would not lie, was a witness for the State; that afterwards he was subpœnaed for the defendant, and had to be sent for and brought here after he had been discharged by the State. Those gentlemen who are appearing on the other side are honorable men—far be it from me to impute any motive to them other than that which would actuate men of the highest character, but do you think it is fair? What do you think is the province of the State of North Carolina, when a man is charged with a crime, but to see that he has a fair trial, to see that all the evidence is brought out which may bear upon his case; and do you think it was fair to send this man away when they found that his testimony would not serve them, and that he did see a man upon the train, that he looked at him, that this man, who Mr. Lockamy thought was sitting with his head down in some suspicious attitude when Mr. DeVane got upon the train, talked to him all the way, talked to him freely about the country, about the people; he looked at the man, he examined his face, he saw him, and he says that he could not identify him as the same man as the prisoner. Gentlemen, it does not make such a tremendous difference in the appearance of a man to cut off his whiskers. We have seen each other with different cuts of beard, yet we have never failed to recognize each other. Suppose I should cut off my whiskers, don't you think you would know me? Suppose I should wear them long after having worn a smooth face, don't you think you would know me, if you should see me again? It does not make such a change in the appearance of a man as you would be led to believe. Now, it is left to the fertile imagination of a colored girl, Lizzie McCoy, who says she knew him, and it was he and no one else. Gentlemen, as I said, this is a matter which was talked about; you see that detectives have been at work in this case, you see that we have positively laid aside and crushed with damning force the testimony of two of the most important witnesses, Tom Phillips and Edgar Gillespie; now, when all the rest of these witnesses are brought up and utterly fail to testify to this one thing, in the face of all these rumors, in the face of all these efforts that have been made to bring disgrace and death upon this man, are you going to pin your faith upon the unsupported testimony of a single woman?

Let us go on and hear from Capt. McNair, who, I suppose, has as good a character as any of us, and who swears positively that the prisoner went on to Alma that morning, instead of stopping at Maxton. Of course the train stopped awhile at Maxton, and he might have got off; the gentlemen might be correct, who say they saw him at the depot at Maxton, but he went on to Alma. I want to call your attention to the fallacy of the argument of the gentleman who preceded me, when he says, "oh, but Alma was only two miles from there, he was only two and a-quarter miles from there, and he had an hour and thirty-five minuutes, that is from 7 o'clock to 8:35 when the train passed there." But do you remember the testimony of Mr. H. K. Cole, who says that the man who came there and gave his name as McDougald—and that is no proof that this man was McDougald,—that this man came there at 7 o'clock. Now, where is your hour and thirty-five minutes that he had to walk two and a-quarter miles from Alma to Maxton? Is there any certainty about this thing? Is it not all confusion, perplexity and doubt? Is it the counsel who, as you have been warned, is attempting to confuse the jury, or is it the deliberate testimony of the witnesses who have been here in your presence? He went to Alma, he was at Alma after 7 o'clock in the morning; the man that Mr. Cole saw, and who tried to pass himself off as McDougald, was there two and a-quarter miles away at 7 o'clock in the morning. Reconcile it, gentlemen, if you can, but remember that you must be satisfied of the truth of every material fact that is alleged by the prosecution against the life of this man. How could he be at Alma at 7 o'clock in the morning, and at the water-tank beyond Maxton at 7 o'clock in the morning. Horace Jones corroborates Capt. McNair; a man of good character

that he is might possibly have been mistaken, you say, but Horace Jones corroborates him. He tells that he saw him, and two men cannot be mistaken in this matter. McCormick and Cottingham say he stopped at Maxton; he may have stopped, the train stopped there for fifteen minutes or more; he may have said something to Mr. McCormick, which, in the light of the immense volume of rumors and talk which has comes on now, appears to have been that he was going to take the Fayetteville train; McCormick may have been mistaken with regard to the train he said he was going to take, because Mr. McCormick saw more bundles upon his arm than any man can generally carry, and than any other witness in the whole of this case ever saw this man have.

As I said before, circumstancial evidence is such that you must try each separate and independent fact alleged with the same solemnity as the main issue of the case; if one of these facts, one of these material facts, that is relied upon by the State, has fallen to the ground, then you cannot convict this man.

We pass on, gentlemen. Who saw him at Red Springs? Why, nobody but Tom Phillips, who was quietly at work in a railroad shop at Fayetteville at the time the train passed Red Springs. You remember the testimony of Mr. Hector McLean, that there were eight telegraph poles, 60 or 70 yards between each one, making at the lowest calculation 480 yards; and then there is no evidence that he was on the train; they have utterly failed to show you that this man was on the train. You want proof, gentlemen; you are dealing in such a matter now that you require proof; you do not want conjectures, you do not want rumor, you do not want suspicion, you want the truth. The very name of the response you make to this issue, "verdict," means that you shall speak the truth, that you shall ascertain the truth and speak it, and you cannot declare the verdict upon any mere conjecture. Nobody saw McDougald at Red Springs. Then we come to the fact, if you believe it, as testified to by Charlotte Dumas, that she saw a strange man; she said it was on *Monday* afternoon, after the freight train passed; she lived in the section-house; the section-house was a hundred yards from the depot, and Mr. McPhail testified that that train was not a hundred yards long; it would not have been necessary for anyone to testify to the fact that the train was not a hundred yards long, and so there is a suspicion attached even to the testimony of Charlotte Dumas. When you break down one witness in a case like this, gentlemen, when you have reason to believe that there has been tampering with one witness, why, whom can you believe? You have to scan with the greatest care, you have to examine with the utmost minuteness the testimony which is offered by all the others; and so, according to Charlotte Dumas, it is extremely doubtful if that man could have gotten off the train before it passed her house. But it did pass, she says; there was a good-looking white man there, but she does not identify him as this prisoner. Mr. McPhail had a casual glance through a closed window, just as he was in conversation with Mr. Murchison, he looked around and got glimpse of a man with a duster passing some 30 or 40 yards away; he says it was his impression that it was a white man, but does not even know that.

Now, gentlemen, how about the charge that this man was on the train? Your minds must be brought to that conclusion that there can be no reasonable doubt yet existing; you must be clearly and fully convinced that he was on that train, or else the case of the prosecution falls to the ground. The only witness that proves that he got on that train, that he saw him on that train, has been absolutely crushed to the earth. Then we have another man upon the public road leading from Shandon, just at dinner time, when people would be going and returning from dinner, plenty of people right on that road; this man, not the prisoner, but this man, whoever he was, left Shandon after one o'clock, and Jeff Cobb saw a man with a long duster a little after one o'clock; he lived a mile away and saw that man meeting Fannie Mears and Henry Smith. I want to know, gentlemen, considering the character of that road and of the country through which he passed, where he had the opportunity—if it was the same white man where had he the opportunity to make that sudden transformation of himself? Henry Smith

met a curious looking man with a long duster, all blacked up; it looked to him like you could see white places on his hands and white spots on the back of his neck; "did not say anything, only just bowed his head; he had a valise and oil cloth and a stick through it on his left shoulder and held it with his right hand; did not notice his whiskers; had a moustache; did not notice his hair." You are to believe that each one of these witnesses saw a man with a great black wig covering his head and great side whiskers, and you will find that these witnesses testify to a man with whiskers all over his face, covering his whole face; one of the witnesses, I think it was John C. Conoly, testified that he had a long beard, as long as Major Shaw's here, and he has about the longest beard in the court room. Upon examination before the magistrate, I call your attention to the fact, Henry did not say a word about the white spots on the neck and hands; that was a very important fact, to be able to tell whether this man was a black man or a blacked man; that this is one of the very strongest circumstances of the case, and yet when the matter was fresh in his mind he says, "I saw a man on the 21st of April, did not look like anybody that I ever saw, had on a long duster, wide-brimmed hat, a long moustache, a little beard under his chin; he was on the opposite side of the road from me; I saw him in Mr. Jeff Cobb's lane about 2 o'clock, a slim man, tall and slender, had a valise and a stick run through it on his shoulder." These things gather volume as they grow, and suggestions have been made; far be it from me to say that any suggestions have been made by any of the honorable gentlemen who represent the prosecution in this cause; I do not do that, but I say that detective work is displayed throughout all this case and that it shows that witnesses have been tampered with, that memories have been refreshed, and that men and women have been made to swear here that which they did not swear when the matter was fresh in their minds and when they were examined before the magistrate.

Then comes Mrs. Humphrey, who says that he was certainly black, that his face glistened; she thinks now that it was an unnatural appearance. She says before the magistrate, "I saw a man pass the road, was a black man, whom I took to be a negro, was tall and slender and had on a duster, wore glasses, had a package on his shoulder, and an oil cloth over it; about 2 o'clock when he passed my house one and one-quarter miles from Shandon." Here it was that we saw Miss Sallie Wilkes, who said that her recollection was much brighter now than at the time, so that the recollection of these witnesses is brightening as the time passes away. I do not impute anything to Mrs. Humphrey—I believe that she is trying to tell the truth now, but I say that you may reasonably infer that the rumors and conjectures talked in the neighborhood have raised up phantasies and shadows which they never saw, and which appear to them now as natural objects of the mind. It may be that this was the murderer, but fixing it upon this defendent here is the child of the imagination; it comes from the thousand-tongued rumors, which passed through that country, and have been ever since this horrible murder occured. Now, Mr. Neill Smith is the first one of the witnesses who in the remotest degree compares him to McDougald; every one of the rest of those witnesses who saw that blacked man on the road characterizes him as tall and slender; Mr. Neill Smith is the only one who thinks he was about the size of the prisoner. Are you going to disregard the testimony of all the rest of the State's witnesses, which prove to you that it was not the prisoner at the Bar, because one of them has brought his mind to the conclusion that he was about the same size? It was J. C. Conoley, colored, who said, as well as Mrs. Humprey, that his face glistened; he knew he was a painted man, because his face glistened. Now, let us consider that a moment: when a man puts lampblack over his face, his face does not glisten, it blackens a man a coal black without any glistening about it; there is no shine in lampblack, it has got to be prepared for the purpose, and it was a dull, coal black if that man was blacked with lampblack, and his face could not have glistened. It glistened so that it was unnatural, she said; well, now, without the least disrespect to the witnesses who immediately followed her upon the stand, you saw an example of the pure African

type where the faces were black and they glistened, not with lampblack, but with the natural color which the Almighty had put upon their faces.

Now, Miss Sallie Wilkes. I cannot refer to that testimony with the accuracy which I would like to, but you will remember it better than I. My impression of her testimony was that she saw this man a short distance from where the murder was committed, and she never said anything about his being tall and slender. Now, in her testimony before the magistrate Miss Sallie says: "I saw a man about a quarter of a mile from Sim Conoley's house on the public road, about thirty yards from me, looked like a negro; had on a duster, broad-brimmed hat, a valise strapped on his back over his shoulder, hung down to one side. Could not tell if he had any beard; was tall and slender and looked as tall as Sim Conoley, and had on dark colored pants." Remember they are going to try to fix him with a pepper-and-salt pair of pants on that occasion, because that was the color of the pants which were found at the bridge. Now this young lady has improved in her testimony much since she delivered it before the Justice of the Peace. To pass on. Next he appears to Ed. Gillespie, when it was clever daylight. Shall I trouble you, gentlemen, with Ed Gillespie's testimony any further? Is it necessary for me to go on with Ed. Gillespie's? Is not he standing off with Mr. Phillips? The gentlemen for the prosecution did not rely upon him; he did not mention Mr. Phillips; he did not want to mention Gillespie, but he could not help it. I will pass him over; I will not trouble you any further with Edgar Gillespie, except to say that the witness which we introduced was for the purpose of showing that he had told others, not what had absolutely corroborated him, because he told him the same story, but we introduced him because he said that Edgar Gillespie told him that his wife waked him up, and Edgar Gillespie told you that his wife was not there; that when he stayed at that house his wife was not there and when she stayed that he was gone. With the number of witnesses who have proven to you the character and reputation which he bore, I will not trouble you to name them.

Then he goes on towards Maxton in broad daylight, on four miles of the public road from Campbell's Bridge, and remember people are passing about in all that country, and they don't bring a witness to see him all the way from Campbell's Bridge to Maxton; though he washed off the disguise that they say he had on, no one saw him. The fact, itself, contradicts any statement of that kind. Now, gentlemen, I shall have to refer a little to the clothes at Campbell's Bridge: George Blue testified that having found the clothes at Campbell's Bridge early in the morning—he lives two and a-quarter miles from Campbell's Bridge, and was there the next morning and found a pair of pants, a package of lampblack wrapped up in a *Wilmington Messenger*, about eight or nine feet from the bridge, and an old hat, a pocket-handkerchief, a piece of looking-glass and an undershirt; remember that, an old black wide-brimmed hat with holes in the brim, a new undershirt that was black around the collar and sleeves. He had them in the oil-house hung up, and now he says that he saw the prisoner on Saturday morning after he came to the oil-house. "I was up at the store and saw him come from Laurinburg; I went to the engine; the prisoner came and hitched his horse at the store and came on behind me and asked me if I was the fireman, and said he heard I had some clothes that he would like to see. I went with him to the oil-house and could not find them, except the hat; there were houses there; I do not know who had been there; I went to the store to see if they were there; I looked in the shop and in the wagon; afterwards we found them under the oil-house. The prisoner laid them out and looked at them. He asked us what we would do, and we told him if we were in his place we would take them and make what we could out of them; and he said his uncle was killed that night and he supposed that the man who killed him was sitting in the path that evening waiting for him, and he happened not to come that way. Said he shot him in the side of the head, and it seemed like when he fell, he made one step and shot him again." The man talk that way about it who was the guilty murderer, with the stain of his victim upon his conscience! But I read that for the purpose of show

ing you, gentlemen, that he did not have any chance to go there and get those clothes and hide them. George saw him coming from Laurinburg; George saw him ride by the oil-house up to the store and hitch his horse, and as George started back to the oil-house he followed him. When did he have an opportunity to go there and hide those clothes?

There is another little circumstance about this case:—I will return to this matter of the clothes a little further on, because I want to follow the argument of my friend as near as I can. I will suggest to you about this swamp, that there were streams in his way in which he could wash and hide those clothes before the night had passed away. There were other people at Campbell's Bridge, so that this bundle might have no connection with this matter. There were raft hands there, and the gentleman does us great injustice when he says that the testimony of the witness that some one came there in the night and bought crackers and that that was Mr. Cole, was intended to cast suspicion in your minds against Mr. Cole. There never was the slightest idea of such a thing, gentlemen; it is great injustice to those of us who represent the prisoner to say that any such idea as that was in our minds. When this testimony was introduced it was for the purpose of showing that that place was frequented by men coming and going; till in the night they were coming and going, and that it might have been left there by some one else. Mr. Cole comes up at the subpœna of the State and testifies that he did go there; what does he say about the other man that was with him? There is a reasonable hypothesis; there were two men there that night, why could not one of them have left that bundle there? Ah, but the clothes are too fine for ordinary people to wear. Now, if any of you have bought undershirts in this market where they sell cheap, or anywhere in this country in the last year or two, you may know that pretty nearly anybody can afford to wear a tolerably respectable undershirt—they cost very little. It was not a bran new, gray pepper-and-salt pair of pants that a man would wear to a wedding, it was an old pair according to their further accounts, and I can tell you, gentlemen, that many a man goes down the river on a raft that is able to wear as good a pair of pants as you or I, and who carries them along with him too, to put on when he gets through his business and comes to the place where he wants to appear to better advantage. Talk about the clothes not being such as a laboring man would wear won't do. Men who are in that line of business that Mr. Cole was—was he not able to wear clothes as good as anything that was described in that bundle, and had not he been on that raft? Of course they could have worn them.

The most strained construction I have heard in a court of justice is to attempt to fix upon the prisoner, in the face of the testimony of George Blue, that he went there and tried to hide those clothes and then went and tried to find them. Gentlemen, when did he come for these clothes? He came for them on Saturday, and that explains another thing. It is held up to you as a dark and damning evidence of his guilt, because Mr. James McBryde on Friday was going on down to Lumberton, and found this defendant on the train going to Wilmington. He had a long conversation with him, and in the course of that conversation he told him—and it was the first time he had ever heard it—that those clothes were at Campbell's Bridge Why, he was anxious to ascertain who was the perpetrator of this diabolical murder; he did not wait to attend to his business in Wilmington, but he immediately left the train as soon as he got there, came right back and went to Campbell's Bridge and got those clothes. Does that look like a man who was attempting to conceal anything? It is a perfect explanation of his going to Wilmington and returning upon that train. It is your duty to give every reasonable interpretation to the acts of a man consistent with his innocence.

Well, they say that he lost the clothes, that he lost them on purpose; and now, I want to ask you gentlemen, as reasonable men, if he was going to lose those clothes, if he was going to put them away out of evidence, why would he have selected one of the most intelligent men in the county of Robeson, Mr. Mac MacKinnon, and gone to exhibit them to him? Don't

you know that Mr. MacKinnon, after having examined those clothes, would be as good a witness as to what they were as the clothes themselves? Here is a man now that is going to make way with the evidence of his guilt, and the first thing he does is, that when he sees Mr. MacKinnon as he passes his place, he tells him that the clothes are found at Campbell's Bridge and he is going to Campbell's Bridge to get them, and he brings them back and stops and spreads them out and exhibits them to Mr. MacKinnon. Is not that an answer? If I should stop right there,—is not that an answer to any imputation, any charge which is made that he has done away with those clothes to prevent their being used as evidence against him?

Ah, but Mr. Phillips, who stopped him at the blacksmith shop, wanted to see the pants and he did not show them; he did not know Mr. Phillips and Mr. Phillips did not know him, and he had not time to stop and exhibit them to every one. Mr. Hodgin says he don't know whether he heard him or not when he asked him about the clothes. And so these facts, which are so strange and so convincing and so suspicious, melt away into thin air when held up to your examination. He went out with them to his uncle John's, and there we have the testimony of Neill Conoley as to what occurred there. Neill Conoley was not there when he arrived; he came up afterwards; he found the road cart sitting out in front of the door in as safe a place and as public a place as could be; he found the clothes carefully put away in the box of the road cart; his father and the prisoner had gone to see a magistrate and they did not return until night. The clothes were mentioned; you are asked to believe that the prisoner never said anything to John Conoley about the clothes; why should you believe that? Is there any testimony that he did not tell John Conoley that he brought those clothes there and that they were right there at his house. They say that we ought to have put John Conoley on the stand; in replying to their suggestion as to what witnesses the defendant should offer, or his counsel should advise him to offer, they have made strictures upon the failure of the prisoner to put upon the stand several of the witnesses; we have endeavored to take up no more of your time than was necessary to develop fully the case which we desired to make; we have taken one witness from each prominent point, and the other witnesses had, to the knowledge of the State's counsel and the counsel for the prosecution, been here in the Court House, and they could have been called if they wanted them. Indeed, there were State's witnesses they say we ought to have put on; Lizzie Conoley and Ed. Conoley were summoned here for the State; the State examined them and found they would be of no service to it, and discharged them here in open court. We held them to see if it would be necessary to put them on; but we took one witness of the facts that they would have testified to, and left them to the tender mercies of the State, if they should have chosen to put them on. Now, why did not they put them on? The burden of proof is on the State in this case. I was surprised at a remark made by my friend, that he hoped that this prisoner could lift the burden upon him. Gentlemen, there is no burden upon him until the State puts it on him. They forget that in our land of law and liberty every man is presumed to be innocent until he is proved to be guilty. It is a protection for us all that no man can be convicted of crime, or held to be guilty of any crime, until twelve men sitting as you are should so pronounce him. It is a little too early to ask a man to lift the burden off of him before the State of North Carolina can put it on him. They talk about our not introducing more witnesses, witnesses summoned by the State, witnesses in the presence of the court, witnesses sitting all around them, and they try to cast an imputation upon us for not having put on more witnesses. What is the use of taking up the time of the court, after introducing one witness upon a subject like that, and leaving the rest, who are State's witnesses, to be called if *they* choose to do so?

He met Mr. Purcell and Mr. Johnson, and he openly told them that he wanted to get out of the country; he had been to John Conoley's, and he had found out that it was dangerous to remain in that country; he had gone to bed that night, shut up in that house, and in the morning, when he went to get the clothes, or before he got up in the morning, the clothes were gone. It is

a circumstance now that is offered against him; the testimony of the witness, Neill Conoley, who has not been impeached and cannot be impeached, who is evidently a young man without a great deal of intelligence, but man enough to tell his story and tell it truthfully, for you saw it in his face, to make no perversion; he told you that when he came into the house that night the clothes were in the cart, and that McDougald, the prisoner at the bar, was in bed; that he fastened the door in a peculiar way, a way that nobody knew except the family; on account of this mysterious murder of the uncle and brother, they had become fearful, and they fixed the latch so that they screwed a screw into it, and fastened it in a way that no one knew; that he went to bed with his head right at the bed in which McDougald slept, and that McDougald did not go out of that house that night; if he did, he don't know it, and he would have known it if he had gone; so he showed you that no man could have gone out of that house without waking up the family. Go out of the window? Why, the testimony, gentlemen, is that the window was propped up from the outside, and that if they had taken it away the shutter would have fallen; that there was no chance to do that without making a noise, and that it was exactly in the same condition in the morning as at night. So there is this prisoner at the bar quietly reposing in that house during the whole of the night, and the clothes gone before he got up in the morning. Where is the theory that he slipped out and did away with those clothes? What would he have carried them there for? Why would he have carried them along the road and exhibited them to the most respectable citizens of the county? What would he have carried them there at all for? Could not they have been lost at an earlier period, if he had intended to do away with them? But to go through all that ratiocination and then pretend they were lost!

Now, gentlemen, you will notice that he is active in looking up this matter, and in all his examination, in going from place to place, getting the clothes, doing what he could to discover who was the perpetrator of this horrible crime, that he never flinched until those clothes were lost; then there seemed to strike him an idea that it was dangerous for him to be there any longer. He knew that he had an enemy; it is in evidence before you that he had an enemy in that country, and that that man had accused him of this crime; he had reason to believe that some one was around that house that night; it is in evidence, somewhere, that he told some one that John Conoley had been cut off when he went out of the house there on one occasion, that the Conoley family were frightened, that one had been killed, and that they knew not who was the perpetrator of the deed, and that they were afraid. They were fastening themselves up in the house at night, and fear struck him, so he left the country. You have abundant evidence, the names of the witnesses for the defence, who testify that they heard of the threats in Robeson, threats so great, gentlemen, that the people of Laurinburg were about to organize to protect him; it was openly said upon the streets of Lauriburg that if he were carried to prison it would be necessary for the men of Richmond to go with him and protect him. You have heard of lynch law, and I tell you, gentlemen, the stoutest hearts will quail before it. What is it? It is taking of the law in their own hands by men, and the taking of a man and assuming him guilty unto death by men who have not tried him, who have not heard the evidence against him, and who, if they had, would have no right to put him to death or to punish him. Lynch law is perpetrated in the night time under the cover of disguise by crowds of men who are unknown. The history of North Carolina for the last few years warrants me in saying to you that any man may dread the effect of lynch law when he comes under suspicion. And so, fearing the wreaking of private vengeance upon him, fearing the uprising of the people against him, and the summary execution of that which they call law and which was worse than no law at all, his courage failed; he knew the character of the person with whom he was at variance in that country; he deemed it best, and he told Mr. Purcell that he must get out of that county, and he told Mr. Johnson, and he left. Now, they rely upon his flight as the particular evidence of his guilt. I want to call your attention, gentlemen, to the fact, that while

flight affords some presumption of guilt upon a man who has been charged with a crime, that that presumption is of the very slightest character, that it is always liable to be refuted, and that it cannot be relied upon as conclusive proof of guilt. I want to read you from a law book on that subject a short sentence which comes down along with the wisdom of the ages; it is under the head of "Presumptions."

[Judge MacRae read an extract showing that flight is not always a proof of guilt, but that fear may spring from a very different motive than conscious guilt.]

Could it have been written better to suit this case than it was? Well, gentlemen, to go along. Wednesday morning, the 22nd. I want to examine with a little critical care the testimony with regard to his being seen at Maxton the morning after the murder with indications of black on his face. Mr. Herring testifies, and he was a willing witness; you remember how he attempted to delineate the negro character and speech; it is Mr. Herring, now, who says he knew the prisoner about a year, had seen him often; his family lived at Laurinburg, but on account of the way the train ran he was not able to spend Sunday in Laurinburg as he formerly did; went to Laurinburg Tuesday night, coming back by the local freight Wednesday morning; got to Maxton about 7 A. M. "When the prisoner got on I looked at him a little while, I did not know him, he always looked nice before; then I saw it was Mr. McDougald from Laurinburg; I thought so from his whole appearance. After they started, he spoke to him and told him that the train had been taken off and he could not come to his Sunday School as he had been doing; that he had joined his class in Sunday School. Said he looked seedy, had something like a drab-colored duster and a black valise and an oil-cloth; all these things that he must have brought back with him if he had them then, they have been disposed of by that witness; when he sees him there and sees marks upon his face, could see blacking upon his face and a small streak upon his neck, grabbed his valise and said "this is my getting off place," and he got off; and Mr. Jacob Greenwall, who seemed to be highly indignant that the defendant called him Mr. Flaum instead of Mr. Greenwall, says he found black all under his eyes; that was the only place he saw though, he did not see any black on his neck, as much as he looked at him, but he just saw black under his eyes, and he saw him again the same day at Laurinburg. Now, gentlemen, that is the testimony of the one side, except Mr. Crowson; Mr. Crowson says that on that morning he came into his establishment and that he was muddy and dusty both. Now, I want to know how a shoe could be muddy and dusty at the same time, and the singular part of it all, gentlemen, was that in that country or down there near Maxton there was no red mud. He had red mud on his boots. Now where did the red mud come from? These inconsistencies are matters which you are to scan closely to enable you to eliminate the truth. If you believe that there is any red mud down there in that country, why you can consider that testimony.

On the other hand Mr. Powers, who is a man of as good a character as any man put upon the stand, says that he saw him after the train had come in that morning; when he first saw him he was leaning back against the house; he went up and spoke to him; Mr. Powers was standing down there on the track, and the prisoner, he said, squatted down so as to get his face right near the face of the witness; that he looked him square in the eyes, that he had a conversation with him there of some minutes, and he swears to you positively that he had no blacking on his face. Now, would not he know it? Would not Capt. Powers know it if he had no blacking on his face? Is not there a doubt, to put it in the very lightest way, is not there the very strongest doubt as to whether there was any black on his face? But that is not all. Mr. Sellers testified on that subject; Mr. Sellers saw him there; and testified that there was no black on his face. Mr. McGirt saw him there and Mr. McGirt testifies that there was no black on his face. So there it is, Herring and Greenwall and Crowson on the other side with red shoes, and Powers and Sellers and McGirt on this side. Now, gentlemen, what is the truth? The State has got to show you what the truth is; it leaves this mat-

ter in doubt and uncertainty; it can bring no conviction in your mind, and you cannot say that you have been satisfied that he was there with blackened face on the morning of the 22nd.

They say he told a falsehood as to his whereabouts on the night of the murder. How do you know it? How do you know he told any falsehood about it on the night of the murder? Mr. McNair and Horace testified that he went on down to Alma; there is no witness who testified that they saw him return from Alma; there were other trains going to Wilmington on the same day, and the only testimony is that of the conductor of the train, that he did not see him. Don't you know that coming up in the night time, men curl up and go to sleep and stick out their tickets to the conductor, and he don't know half the men on the train in the night time? How often have you done it yourself in traveling; wrapped yourself up and gone to sleep, and when the conductor put his hand on your shoulder, just handed up your ticket and gone to sleep again; he says that he did not see him on that train. Well, Capt. Nehemiah, who was the engineer, says that he was not on the engine. Of course he was not on the engine. How do you know that he did not go to Wilmington? Because Capt. Welsh just did not know that he was on the train? Is the conductor required to take our names down as we travel on his train? There is no testimony which you can rely on to show that he was not in Wilmington on that night and came up on that train. If this, gentlemen, is wrapped in doubt and uncertainty, how do we know the truth? And it must be proven to you beyond a reasonable doubt before you can accept it. What is truth? It is the despairing cry which has come down the ages. Men look for truth and search for truth and strive for truth. What is truth? Has the State proven that he did not come up from Wilmington on Tuesday night? The burden is on the State to prove it.

He gets back to Laurinburg on Wednesday noon. Mr. Robbins sees him; now his face has been black all this time, and they want to hang him because he had a black face; now they want to fasten the rope around him because he had a clean face. "Consistency, thou art a jewel!" Let us have it one thing or the other, gentlemen. Now, Mr. Robbins notices that his face was a little red; don't let that circumstance work against the man, gentlemen, or some of us would be found in danger. Men of light complexion, and with the blood which we bear in us, many of us are not always able to control the blood which surges up into our faces. Let any of us ride from Wilmington, on a train all night, without taking a sleeper, and you will find our faces rather discolored in the morning. Well, Mr. Robbins said that his face was a little red, but they rely upon Mr. Robbins for a great deal more than that, gentlemen, and I say that my friend, without intending it, was unfair in one of his statements, going on to discuss Mr. Robbins, which brings in the fact that this young man was the leader in all the innocent amusements in that section of country, that he was a member of an association which gave concerts and theatrical exhibits, and that he was in disguise as a negro occasionally, and that he used that disguise there, and that he had an opportunity therefore, to disguise himself as a negro, and he says that he never heard of his being disguised as a negro or of his attempting to disguise himself as a negro until that policy was obtained. That is unfair, it is unjust. You are asked to come to an inference about a matter of which you know nothing; the fair inference would be, that he was a young man in society at Laurinburg, that he was accustomed to act with the young ladies down there in these amusements of theirs, and that this matter had been going on for years; that would be the just inference which you would draw from it, instead of going and imagining the fact that he never personated the negro until the insurance policy was taken out upon the life of Simeon Conoley for the benefit of Margaret Elizabeth Conoley. Well, in these concerts it was necessary for them to have a wig and whiskers. He borrowed on one occasion from Mr. Robbins side-whiskers, not whiskers which go all over his face, gentlemen, not whiskers that hang down like Major Shaw's, but he borrowed side-whiskers, black side-whiskers, and a wig, a red wig. It is true that Mr. Robbins said that he told him that Dr. Everington could have it dyed for him

there is no syllable of evidence that Dr. Everington ever had it dyed for him, and the wig that he wore on the occasion of the concerts there was the wig, according to the testimony of some witnesses, that was used by any and all of them. Now, that is the wig it fixes him with, a red wig that had been combed out a little way behind; the character that was personated by Mr. Robbins, I believe, was that of an Irishman, and that was the wig that he lent the defendant. Now, some of the witnesses testify as to the painted man on the road that he had on black whiskers all over his face, and one said he had chin-whiskers. How are you going to prove them so as to reconcile them to be the same thing that Mr. Robbins let him have? But this is on a par with the testimony of witnesses as to his disguise in acting as a negro, when you see how they labor to show that in those concerts, when disguising himself to personate the negro character, that he wore a duster, and yet it turned out that he did not wear any duster at all, and, according to the testimony, he never did wear a duster when he was personating that character. He had a coat that was turned wrong side outward, and having it on him in that way, it had canvas lining to the sleeves, and that was the coat he wore at Laurinburg, and he had something of the kind at Mason's Cross, but there is no evidence of his having worn a duster, and he wore no whiskers at Mason's Cross at all.

Now, gentlemen, if you are in any doubt as to the cause of his flight; if I have satisfied you, or raised in your minds a reasonable apprehension, that judging human nature as you must judge it in order to arrive at your conclusion, that he may have been influenced by his fear of Millard Moore, by his timidity and the fear of the populace, by his having heard threats of lynching, and that he determined to get out of the country until he could establish his innocence, why it falls to the ground unless that flight fixes guilt upon him; it falls to the ground because I can show you a case in the books, of recent occurence, where leaving out the one element of flight, the evidences of guilt were much stronger than in this case, and yet the court would not allow the instruction to be given to the jury otherwise than as the evidence showed.

[Judge MacRae read the case of a man who was charged with murder in Richmond county, where there was only a suspicion against him, and the jury acquitted.]

I forget whether I have referred to the matter of the tracks. The whole evidence that is before you is that he said himself that the track was about the size of his. Was he a madman, gentlemen, was he absolutely crazy? Did that look like an innocent or a guilty man? "Why that track looks about the size of mine," and they say that it was something like the size of his; and they say he tried to rub it out, when there were a hundred of them there; there was the track and the evidence was that he stepped over it, and a man said, "you are rubbing on that track, don't put it out." That is a great circumstance now; if there had been only one track there, and he had carelessly stepped upon that again, why there might be something in it, but there were a hundred of the same tracks all around there; it was not the track at the head of the body; there were tracks at the head of the body which were preserved intact; it was another track that they said that he had carelessly or, they would have you to believe, intentionally attempted to rub out with his foot. So there was one on this side and another on that side, and it would have taken him all the morning to go along and rub the tracks out, if he had attempted anything of the kind. Now, gentlemen, if you are left in doubt and uncertainty as to the reason of his flight, then all the rest of this testimony explains itself, because a man when he is going to leave takes necessary precautions; when he was on that train, where he says he had gone for the purpose of going to Rockingham to consult Mr. Shaw, and Mr. Lyons spoke to him and asked him where he was running to and he seemed somewhat startled; the counsel says that he was offended and that Mr. Lyons apologized. Do you remember anything in that testimony except that Mr. Lyon said that he seemed rather offended, and that was the whole of it? If he had intended to go away, or if such a remark was made to him when he was under apprehension of something of this kind,

it may be reasonably thought that it would startle him for a moment. But he passed on and Mr. Livingtone had a conversation with him; he tells Mr. Livingstone all about it, and they say that because he told Mr. Livingstone that the clothes were with Mr. Shaw—which Mr. Livingstone forgot all about when he told Sheriff Smith of the conversation a few minutes later;—he says that he told him the clothes would be at the examination. It is natural enough that he should have told him so, if he was intending to go away. This man was influenced by fear and he wanted to get out of the country until the matter should be overpast and people's minds were not so irritated against him. Why, no wonder that he should have made some remark like that.

Then Col. McRae. The only thing in all the 3,700 miles of travel with Col. McRae by his side all the time was that, when he was told that he ought to clear up this matter as to where he was that night, he said it would be right hard for him to show up where he was, and that is the whole of it; that is all the testimony. Do you think that if he had been guilty of this crime that he would have given himself over into the hands of the enemy in that way? It was a natural remark; when a man knows where he is, and his friends are not able to testify as to his whereabouts on that occasion, he may well say that it might be hard for him to account for it. Mr. McBryde corroborates what he said of the cause he gave when he had a conversation with Mr. McBryde—I have referred to that already—that it was the fear of Millard Moore.

Well, gentlemen, there is another matter. They say that he showed his evil purpose at a much earlier time, after the taking out of that policy, with which I have shown you that he had no interest, that he attempted to poison the old man; that he went over there and absolutely attempted to poison him; and the testimony with regard to all of it hinges upon the fertile imagination of Mr. Lee Powell, who was clerk in the drug store, and was probably responsible for the keeping of things in their right place, and that is the whole of it. He did go out there; he seems to having admitted himself that he did give Simeon Conoley some candy. Simeon Conoley came over to John Wilkes's house in the morning after another witness had testified that he had been with the defendant, and that soon after he got there he was taken sick; that he fell back in such a way that Dr. Prince says, taking all the testimony into consideration, would lead to the belief that it was poisoning by strychnine or some irritant poison which would affect the spinal column. Now what happened after that? Who knew it? Who knew anything about that in Laurinburg until the prisoner told it himself? Was any charge made against him in Larinburg that he had ever attempted to poison his uncle until he went there with a note from his aunt, telling it himself? Is that the way men do who have committed crimes or attempted this diabolical crime? In the first place, the testimony is that Mr. Simeon Conoley went to John Wilkes's house, and that he had the balls of candy. There is no evidence that he had eaten any, but we take it for granted that he ate some, that Mr. Wilkes ate some, that the little boy ate some, and Mrs. Wilkes threw the rest of the candy into the fire. You know, gentlemen, it is human nature with the most of us, that if we have got a lot of candy, and some of them are brandy drops and some of them are not—that accordingly the brandy drops were eaten, every one of them, and they did not hurt the people who ate them. This defendant got word from his aunt that the deceased, Simeon Conoley, had been made sick by eating of the candy. What does he do? Does he try to hush it up? Does he try to deny that he gave him any candy? On the contrary, he goes immediately to the store where he got it, and he calls for the box, and the whole thing now rests upon the recollection of young Mr. Powell Hill, who was in another part of the store sweeping it out at the time, and who in sweeping along in another part of the store could testify that this man went and fumbled all that time in the box, and then got some other candy. What does he do? He inquires for Dr. Everington, and he comes and calls for brandy drops; Dr. Everington wants to give him a fresh box, and he says no, and calls for the old box; and there was a little white powder found in the corner of it; is it an

unnatural thing that in a place like that, by some means, some strychnine might have got into the corner of the box, and only affect a few drops and not the balance? Why, they had made mistakes in that drug store. One of the best men in that county testified that on one occasion he went there to buy some alum, and got some borax in its place; that was nothing against the drug store; those mistakes are liable to be made anywhere. We have heard of the most terrible mistakes of that kind, where lives have been taken by reason of a mistake in the drug store. In a house full of medicine, with a box open—although there is testimony that there was no powdered strychnine open at that very time, it is an article of commerce which is often used, and it may have got in there at some other time. A little had fallen in, had fallen in the corner, because it seemed to have affected very little of the candy; the other balls which this man had in his pocket, and which, if they had had enough to kill him with, would have been sprinkled with strychnine, had nothing of the kind upon them, because they had no effect upon the persons who ate them, John Wilkes and his son. So that is the whole of it. Dr. Currie, a good man, gentlemen, who has not had the medical education which Mr. Prince has had, described the symptoms, and Dr. Prince, who is a distinguished physician, told us what those symptoms would indicate before we knew what the testimony of the State was going to develop. We examined him closely to see whether—because with the little knowledge of that kind we had ourselves—those same symptoms might have occurred from other causes than from the taking of strychnine. We knew that it might be caused by meningitis; we knew that even in children and sometimes, I submit, in grown people that it might be caused by a violent and acute attack of indigestion, and that it was a species of lockjaw, and we asked him those questions; but when the testimony developed that this defendant himself went and made complaint, "why you are selling candy here that has something in it which is dangerous," of course we assumed that there must have been something of the kind upon the candy, but it must have been an exceedingly small amount, because it takes an exceedingly small amount of strychnine to kill a man, as was testified to by Dr. Prince; he not being in the habit of putting up prescriptions himself, did not like to say how much it would look like upon the point of a knife; still he told you that it took an exceedingly small quantity to compass the death of a person, and the quantity therefore on this occasion must have been infinitesimally small, and none upon the rest of the candy which he had there, because it did not affect the rest of the persons who ate it.

Suppose you were trying him now for an attempt upon the life of Simeon Conoley; suppose you had the testimony of Dr. Everington and Powell Hill and Dr. Currie, and that the testimony was presented to you as it has been in this case, and you were called upon to say whether beyond a reasonable doubt you have been satisfied that this defendant had attempted to take the life of his uncle with poison by strychnine, could you but say that there was a reasonable doubt? If so, this falls to the ground and the poisoning passes out.

Now, as to this matter of tracks. The only testimony which we have got about that is the same testimony of Mr. John Wilkes, that he said himself that the track would about fit his foot, and that where there were as many tracks as there were there he stepped on one of them. I will not trouble you further on that subject. I only remark that he said it looked like it was a No. 8 and would fit his shoe, and I doubt very much if it would when we come to examine it closely, because it was only 10 inches or 10½ at most; you may consider that question as to whether the tracks were the same size as his.

Now, gentlemen, we will come right down to the occasion, itself, of this horrible murder; and instead of those witnesses who have been subpœnaed here by the State and which the State are complaining of us for not having put upon the stand, and which the State had here, examined and discharged them, but would have produced them if they had been of any benefit to the State, for you may be sure that no stone has been unturned in this case to bring suspicion upon the prisoner at the bar. We brought an old lady, Mrs.

Effie Conoley, aged 85 years, stricken with palsy 32 years ago, and unable to walk for the past 12 years, sitting in that house in her chair, wasted and worn, yet you could see that her mental faculties were as bright as yours; she testified to you that her eye-sight was such that, but for the tremulousness of her hands, she could thread a needle to-day; she testified that she was sitting. not at the fireplace, not in the south-east corner of the room, but she was sitting out from the fireplace towards the south, where she could see out of the door, and she looked out of the door and saw this man pass the door. The moon was shining as bright as day and she saw him perfectly. There was a gust of wind which blew something back from him, and he gathered it up under his arm, and she saw him to his hips and she corroborates the testimony of the other witnesses, which was that of a tall, slender man as he passed. She says she has known this boy from his infancy, that she knows him well, that it was not he, that it was not his shape, that it was not his size, that it was a man taller than Sim Conoley himself, who was a tall man, of this she cannot be mistaken. Gentlemen, there is some testimony that is worth more than others. Do you know that if you destroy or to a great degree take away one sense, as for instance, if the sense of hearing is affected, that the other senses, taste or touch, will be the more exact. Do you know that a poor old woman, who had been sitting in the house for years, but whose natural force with regard to her eye-sight and her mental condition was unabated, that she saw with a greater accuracy, that she was more observant than people generally are, and that a man, passing there in her view and attracting her attention, would rivet himself upon her mind much more than he would attract the attention of one of us, because she had nothing else to think about. Why there was Mr. McPhail, who was having a talk with Mr. Murchison; he had a casual glance out of the window and saw a man some distance away; the impression did not rest upon his mind for a moment. This old lady who don't see people often, and who on that occasion was looking out of the door; I suppose you believe that after the testimony of Mr. McLauchlin, with all the testimony in regard to those premises, and before he left the stand he had to admit that he did not make the plot, that it was not correct; swore in the first place that it was a correct representation of the whole place and left the stand with the remark that it was not. Do you know whether there was a point there outside of the fence, or whether it was a straight path from the house down towards the place where the act was done? Do you know now whether there was a crook in the fence? Are you not satisfied above all other things in your mind that if there was a crook or anything of the kind, it certainly was not where it was put down on that plot? If you are not, there is no use in human testimony, because this man utterly failed when he attempted to locate the position of the plot. You remember, gentlemen, how he winced under the cross-examination; you remember how he commenced to say, "I don't recollect; I don't recollect."

It put me in mind of the celebrated trial of Queen Caroline; there was a celebrated Italian witness who was put upon the stand to try to swear away the virtue of that woman; when they got him under the influence of a cross examination and got him to a certain place—he could not speak English, he spoke through an interpreter—the only answer they could get out of him from that on was "*non mi recordo*," I don't recollect; and that was his name through the balance of his life. And, so, I could not help thinking, when Mr. McLauchlin left the stand of the Italian whose answer was "*non mi recordo*."

Now, gentlemen, one thing you are satisfied of in this case You have been satisfied that the State has a most able coadjutor and that is the New York Mutual Life Insurance Company, and that the fine Italian hand of its detective runs through a great deal of the testimony by which they attempt to fix the guilt upon the prisoner. Detectives have been at work on this case; testimony has been strengthened; you know a detective is pretty much like a military commission, which is organized to convict. When a detective takes up a case he is never satisfied until he has convicted his man, and he will compass heaven and earth but he will bring witnesses to prove such

facts as may be necessary to convict him; and so in this case, when you find that we have broken down utterly two or three or more of the witnesses who testified, that we have cast clouds upon much of the rest of the testimony in the case, you can not be convinced of the truth of the charge against this man. The State is too slow! The good old State of North Carolina, which has protected us all our days, is too slow. Blood is what is called for; and the New York Mutual Life Insurance Company steps in to the aid of the State of North Carolina with its army of detectives. The country is scoured, houses searched without a warrant; I have a right to tell you so, because there is no warrant under the Constitution of North Carolina that could have been issued under any charge that we have heard of by which these men would have had a right to go there and search those houses; every little circumstance has been tortured into suspicion. Will you hang a man because he ate an orange, and because Mr. Crowson says that he ate some oranges that morning, and that he said like many of us have said, "did you ever feel like you wanted something and could not tell exactly what it was?" That is on a par with that letter that I read the whole of to you, which they seize upon one single line of to try to compass his conviction. Trifles light as air, in their eyes, are made strong as proofs of Holy Writ.

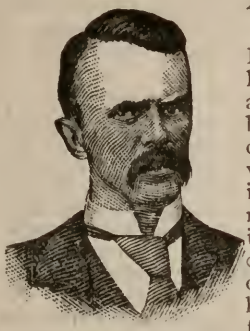
But he is captured; he is brought back before the excitement has subsided; clouds and darkness encompass him; suspicion no longer whispers, but is trumpet-tongued against him; blackness itself surrounds him; the voice of the multitude cries out for his blood. But, gentlemen, there is one pure ray of whitest light that shines out through the gloom. Now comes the value of a spotless reputation. Did you ever see a man with such a character proven in a court of justice? What one of us but would, when we lie down to-night, thank God for such a reputation as he has proven out of the mouths of friends and out of the mouths of enemies. He was a child of the covenant; he comes of a stock whose virtue and goodness and stern religious principles have been tested in the day of persecution. On the hills of Scotland and by the surging waters of the Northern ocean they had illustrated faith; they had come to the hills of Cumberland and Richmond, and to the plains of Robeson; and there they had clung to the faith of their fathers; but he had been reared like Timothy of old, at his mother's knee, in all the precepts of the law; he early gave himself to the services of his Master; he had been foremost in all good work; he was an office bearer in a church composed of men whom we might be proud to call brethren. He was prominent in Sunday School; he was the head of the Young Men's Christian Association; he was foremost in all the innocent pleasures of those best of people; he had borne upon his breast the "white flower of a blameless life." Gentlemen, you heard last Sabbath from the mouth of the preacher, as he read from the Sacred Volume, "what profit is it that we have kept his ordinance?" Now weigh it in the scales and see; is it of no avail? Circumstantial evidence links in a chain every circumstance to be proven beyond a reasonable doubt, every link perfect. When you come to buy a chain, you examine each separate link, and if one of them is imperfect the chain is of no account, it is worthless; so there must be no weak or broken link, no circumstance relied upon but shall be proved beyond a reasonable doubt, no hypothesis consistent with his innocence.

It is no sickly sentimentality, gentlemen, these instructions, which you will have from the court, that you must be satisfied beyond a reasonable doubt; it is not so much for that, or to prevent your wreaking vengeance against a man charged with a crime, but it is the law which is made for our protection and for our defence; it is the sacred privilege of every man upon our soil that he can never be convicted of crime until he is proven guilty before his peers, a jury of his country, and this law, which you are to bring to bear upon this man, is for you and for me, for our safe guard and for our protection.

Gentlemen, what is to-day? It is the day appointed by civil authority and by the churches for the meeting together of the people throughout all this land to render thanks to the God of the Harvest for the benefits which He has conferred upon us during the year. The people to-day with grateful hearts are

raising their hands to their Maker and blessing Him for all the good which He has done them. But our Thanksgiving has been deferred. God grant, gentlemen that it may be put into your hearts and minds and consciences, after sifting this matter to its end, to give to us, to give to the prisoner at the bar, to give to his mother and his father and his friends a Thanksgiving indeed. He is a good son, devoted to his poor old mother, who comes in all the purity of maternal love and sits beside him in his time of trial. Give him back to her, gentlemen! Gladden the anxious hearts of those who look to you for their Thanksgiving. You have in your breasts the God-like prerogative of opening the prison door to the captive and setting at liberty him that is bound. In the words of the officer of the law at the beginning of this prosecution, may God send him a safe deliverance.

JOHN D. SHAW, JR.—FOR THE DEFENSE.



JOHN D. SHAW, JR., of Rockingham, N. C.

May it please your Honor and Gentlemen of the Jury:

I stand before you to represent the defendant, D. A. McDougald. I explain here that I stand not only as his attorney, but as his friend and companion. He is a citizen of Richmond county, and a stranger to you, but has said that upon you and upon the God of his country he places his trial. He has said that he is willing, gentlemen of the jury, to be tried by you; it is the truth, and I do not complain of it, but it is nevertheless the truth, gentlemen of the jury, that he is not tried by men who have known him from his cradle, the privilege that most men have, the privilege of men here in your county of Cumberland, who come here to this bar to be tried by their neighbors and friends, is not his; but he has said that he is contented with you, and I say, gentlemen, that I am contented to have you try him, love him as I do. Richmond county has said so by coming here with its best and foremost men to tell you of his spotless character, of his pure and unexcelled name, to tell you that he has been a true son, a true man, a christian; against him there is no word to be said, against him, gentlemen, no word can be elicited even from his bitterest enemies; against him the prosecution here, with all its blood-thirsty character, against him, gentlemen of the jury, even the New York Mutual Life Insurance Company has not been able to bring one whisper of reproach; and, gentlemen, no mouth has opened, no lips have parted here to utter one word save in praise of this defendant. Is it not singular, is it not unusual, to see a man of the character of this defendant charged with so foul a crime? I know not, gentlemen, what you have been used to in your county, for I am much of a stranger here, but never in my recollection, never in my experience, have I seen a man torn from the pinnacle of respectability and dragged in front of a jury and charged with a crime that would show, gentlemen, that he had sunk in the lowest pits of hell and corruption. Never. Never. Never, I say, never have I seen a man brought from the pinnacle of respectability, down from a height where he was loved not only by the parents who reared him, but by all who knew him, brought into the courts and charged with a crime that the deepest criminal, the foulest villain, the darkest scoundrel that ever trod on our earth, would quail to be charged with; brought down and charged with one of the most unnatural offences that a man could be charged with; yea, I say most unnatural, because it is well nigh as unnatural as though he had killed the father, or the father would be charged with killing the child. So, you see, gentlemen, that you have a great duty to perform here, and you are not alone in that; I have a duty to perform also, but in the performance of my

duty I do not claim that I have any such burden resting upon my shoulder as I know, and you know, rests upon you. My duty will have been discharged when I shall have gone over this evidence and the law as I understand it, and think it to be, and have presented to you the view of the defendant here; when I have done that honestly and fully, I am relieved; there is no hereafter to what I do, none whatever. I cannot take his life; the law does not say to me that I can take it, it is not in my hands, it is in yours.

I say, gentlemen, that when I come here to represent the defendant, I tremble for my own weakness, for fear I can not represent him as ably as he deserves to be, as truly as I want him represented, as I feel that I would like to represent him. Much more do I tremble, gentlemen of the jury, for you; no true man can stand here and look upon you twelve men and not tremble and sympathize with you; you have never been called upon to perform a more serious service to your country or to any man. You, gentlemen of the jury, as I have started to say, you have in your hands the life of D. A. McDougald; it is for you to say what you will do with him; that is, he has consented that it be placed in your hands, the State of North Carolina has so consented, and you have it. You are to be governed by the law and the testimony in this case as to what disposition you are to make of his life; that, I believe, you will do; that, gentlemen of the jury, I know, I feel, you want to do, and if you are careful and give this matter the consideration that it deserves, that you will do and must do.

I have said, gentlemen, that I stand here to represent the defendant. I claim the further privilege in this Court, I claim here to this Court that I represent not only the defendant, but that I represent those who have shed tears around the grave of Simeon Conoley; I claim it because it is truth; it is the truth and no man who sits here for the prosecution in this case can say to you that he represents a single heart that has been grieved by that death; no man can say to you that he represents a single one of those who are now wearing mourning for the death of Simeon Conoley. No man, gentlemen, no man for the prosecution can come here and say that Simeon Conoley's relatives or the friends of Simeon Conoley call for the blood of D. A. McDougald. Is it not so? If it is not so, why, I say, have you not been so informed. Let us hear if it is not so. We have our Solicitor; of course he represents the State. We have another very important personage here, the New York Mutual Life Insurance Company, that, as the evidence discloses, is represented by Mr. Neal. We have other attorneys here, who, I presume, represent no one, they tell this jury of no one; it has not been said, it is the question; if you have been told of it, I have not heard it, and the Lord knows I have tried to hear everything that was said in this court-room. Then, gentlemen of the jury, I say that I am glad that I represent the defence, because in coming to you, I ask of you life and liberty, not death and despair; I ask you not, gentlemen of the jury, to dip your hands in the blood of any man, I ask of you, gentlemen, not a verdict of which you may repent in after years, not a verdict, gentlemen, that you may shudder at the thought of; I do not ask you to baptize your hands in the blood of Daniel A. McDougald, not that. I ask you, gentlemen, to gladden the hearts of this grief-stricken father and mother, of that old woman who lies sick in the room where you left her yesterday; gladden the heart of old John Conoley, the brother of Simeon Conoley, of his sister, of every person who has the right to call him kinsman or fr end; I ask it here of you.

Then, gentlemen, if the friends and relatives of Simeon Conoley come here and tell you that D. A. McDougald is not guilty, who, pray, has the right to come into this court-room and say, "take the life of D. A. McDougald?" I think, gentlemen, the natural right belongs to those who stand bowed in grief before you; those who have stood around that open grave, watching that body as it vanished from their sight, as clod after clod was thrown into the hole; those are the ones in my opinion that have the natural right. There is no right, gentlemen, but it is a right that is claimed, only claimed, and one that I say is unnatural, that is the right which the New York Mutual Life Insurance Company claims, a Northern corporation, a cor-

poration that has received every dollar of the money that it asked to insure the life of this poor man. And why does it claim this right? They claim it for the purpose of trying to escape the payment of the $5,000 to Margaret Elizabeth Conoley. Whose is the most natural appeal to you in this matter? Those that hold dear the memory of Simeon Conoley, or that corporation that comes here and says, "Ah, gentlemen, hang D. A. McDougald; take his life upon your souls and consciences, carry it with you forever; hang him. If you don't, we will have to pay $5,000; hang him or we will have to pay $5,000, and the life of no Southern boy to-day, it is no matter how strict and upright it may be, is worth to the New York Mutual Life Insurance Company the sum of $5,000." That, gentlemen, is the cry of that Company, whether they choose to deny it or not. They cannot put themselves in a position in which they ask for anything else.

Now, it is with you, the life of this boy, right and fair as it has been, something that his friends have all been proud of, something that his county has been proud of. Have you not seen man after man, of the most pleasing and commanding appearance, walk upon that stand, after placing his hand upon the Holy Writ of Almighty God, and swear so solemnly to you that this man was a man of good character, as some would say, a man without blemish, has the highest character, there was none better. But, gentlemen, I ask you, if the life of such a man is worth more than $5,000 or not; I ask you if the New York Mutual Life Insurance Company is not asking too much from you? It seems so to me.

But, gentlemen, as it has been remarked by my friend who just preceeded me, D. A. McDougald stands before you presumed by the laws of North Carolina to be innocent, and throughout all this investigation it is your duty to look upon him as an innocent man, never treating him in your investigation as guilty; it is your duty to look upon him as innocent, spotless, without blame; for until you come in here and say that this charge is proved beyond a reasonable doubt there is nothing against him. That burden the State must assume, the law for the protection of its people has placed it on her. I say that when the State comes here asking a verdict of this kind, or the New York Mutual Life Insurance Company, when it comes here asking this verdict, asking you to take the life of this man upon your souls and consciences, it is not right, it is not fair; have not you the right to demand that they bring to you testimony which is proper and creditable and all that is at the command of the State. I say that you have the right to demand that they bring to you all the testimony that is at their command. Aye, gentlemen, if you have the right to demand anything it is that the State of North Carolina bring to you all the testimony that it can get, all that it knows of, in order that you may say, not that the defendant is guilty, or not that he is innocent, but that you may say whether he be guilty or innocent. That, I conceive, is the duty of the State to you here, and I say that you have not been treated fairly in the trial of this cause here, and I say it with a feeling that I speak to you the truth, you have not been treated fairly. Have you? Has the State of North Carolina and this Insurance Company brought to you all the witnesses? No. Why not? Because, Mr. Daniels had seen those witnesses before they were brought here to your county for this trial. That is why. Who are they? Rufus DeVane is one; the State of North Carolina ought to have put up Rufus F. DeVane and let him say to you whether D. A. McDougald was on that train on the 21st of April or not, in order that you might reach a just and true verdict with all the lights given you by the State and Insurance Company. I ask you, ought it not to have put that man up here and let you hear his evidence? Truly it ought; it knew of it; it knew of it at the time he was called here upon subpœna of the State, sworn by the State and then sent to his home, discharged; I presume they told the gentleman that the defendant might need him, but that the Insurance Company don't need you; "you don't know what we want you to know; you won't swear to what we want you to swear to; go home." Let the defendant look out for himself, and the New York Mutual Life Insurance Company is on the war path.

Then they say, gentlemen,—and they have the effrontery here, the

State has, to walk up here and ask, "why did you not put John Conoley on the stand; why did you not put Lizzie Conoley on the stand for the defendant, and why did not you put Edgar Conoley on the stand for the defendant?" I say, gentlemen of the jury, that it is the duty of the State of North Carolina to work up this case, that the burden here is upon the State, and it owes to you the evidence of every witness which it knows of who knows anything about this prosecution. It says to you by its argument here that these people do know something, and, gentlemen, have they treated you fairly; have they shaken your hand across the life of D. A. McDougald with a hand not stained with blood, with a fair hand and an honest hand such as you have? No, they have not. Why, gentlemen, did you not hear the Solicitor of the State of North Carolina call John Conoley, Margaret E. Conoley and Edwin Conoley just there to the witness stand, as soon as you were empaneled in this case, and announce here, "Your Honor, we discharge these witnesses on the part of the State of North Carolina." We do not want to put their evidence to the jury, we will not give the jury the benefit of the evidence of these witnesses ourselves. That was done. Now, why did they not do it? Was it because they would convict Dan McDougald? No, they would never have gotten their arm from around those witnesses if they could have gotten any such testimony as that from them. Never. Never. They turned loose those witnesses and hugged up this old negro, Gillespie, here to this jury. Gentlemen of the jury, there is only one conclusion that you can draw from their action here in this case, so far as those witnesses are concerned, and that is this: if placed upon the stand here, they would corroborate the testimony of that old lady, who sat trembling in age and infirmity, who spoke to you with a voice which seemed to me spoke to you from heaven itself, so close is she upon the verge of the grave. That is why they did not want you to hear them; therefore they discharged those witnesses here in your hearing. "We have you men here in this box, sworn to try this case; we have delivered into your hands the life of D. A. McDougald; stumble along with it now the best you can; we bear no burden herein; we do not hang him, it is you twelve men who are called by law the jury." Not us. Not us, is what their conduct says to you.

The New York Mutual Life Insurance Company wants the life of D. A. McDougald, and will they put up testimony here that would have a tendency to do other than convict D. A. McDougald? No. If they had, gentlemen, it would have been disrespectful to Mr. Daniels' testimony, and you could not induce them to be disrespectful to Mr. Daniels. Let him scour Robeson county; let him search the houses of these people; let him force people who never ate supper in their lives at 12 o'clock at night to eat at 12 o'clock; let him go to the bedside of this old lady, who lies there in her age and infirmity and talk to her after the shades of night had fallen; let him hound these people from one part of their premises to the other, guided by a witness in this case, John Wilkes, a man who swore he did not know anything about Daniels, took him to the house, walked up to the door without even stopping at the gate and hailing them as did that man who called himself Lum Johnson. Indeed, the premises were treated with more respect by that man who took the life of Simeon Conoley than by this man Daniels and John Wilkes.

And, gentlemen, to proceed further with the argument of the case. I ask you, let us look over this testimony. Was there any motive? Is there any motive here, sufficient for you to treat as a motive, to induce the defendant, D. A. McDougald to commit this murder with which he is charged, and the reason I ask your attention first of all to this, is because the motive is the heart of offences. I repeat it, the motive is the heart of all offences. It is from motive that all men act; it is from motive, I say, that every act of man springs. Then, I say, what motive has the State of North Carolina shown to you here to-day that you deem sufficient to say that D. A. McDougald committed this offence? Is it any ordinary motive, gentlemen, that induces a man to take the life of another? Is it malice, a grudge of some kind, ill feeling of some kind, some bad spirit which must be avenged? None o that here. We know of no bad feeling, no feeling between the dead man and this defendant that could actuate the commission of such an offence as this;

for old Mrs. Effie Conoley has told you that they loved one another like brothers, that they were glad to see one another; that D. A. McDougald had been kind to all of them in many ways. Now, gentlemen, I say to you, if there is one thing more than another that governs men in this life it is that of feeling, and I say to you that the man who entertains bad feeling towards another is the last man to do a kindness for the man he hates. Then I say, gentlemen, with this evidence before you, and it is uncontradicted testimony, with this evidence before you, this defendant entertained no feeling sufficient to prompt him to commit this crime; what then is it? Why, we have not to ask the relatives of Simeon Conoley what that motive was, don't ask the mother of Simeon Conoley what was the motive that could induce D. A. McDougald to kill Simeon Conoley; but listen! The Insurance Company will tell you what it was; it is from that quarter you must hear of it. Why, gentlemen, the motive that induced D. A. McDougald to kill Simeon Conoly, on the night of the 21st of April last, was that there was a policy of insurance upon the life of Simeon Conoley for the sum of $5,000, payable, not to D. A. McDougald; oh no, not payable to him, but payable to Margaret Elizabeth Conoley; but that don't make any difference, why it don't differ to whom it was payable, the fact that it was not payable to D. A. McDougald, and that he has no interest in this policy, makes no difference in this motive. Why, he is trying to get it for his aunt; that is one of the sides they take. Then they say, if he is not trying to get it just for his aunt to have, why I will tell you what he is doing; he is killing Simeon Conoley for the purpose of stealing it from his aunt. Gentlemen, do you believe that? Let us see; and in order to judge this, as of all the other testimony, all the other facts and circumstances in this case, it becomes necessary that you should keep constantly in your mind, and use your knowledge of human nature,—because these facts and circumstances are to be governed—so says the Supreme Court—largely by the fact as to whether they are natural or unnatural, reasonable or unreasonable. Then, I say, is that a natural motive? Is it reasonable? And when I say is it reasonable, I mean this; is it a reasonable way in which D. A. McDougald could hope to get possession of the money from that policy? Is it a way in which you could reasonably expect him to get posession of that money? I say, gentlemen of the jury, and I say it without fear,—for I believe it from the bottom of my soul—I say here, unless you find from this evidence that there is a way in which you could expect D. A. McDougald reasonably to acquire the ownership of this sum of $5,000, then it is your duty to come here and give to this Court a verdict in this case, that will show to the people of Cumberland, Robeson and Richmond counties your disapproval of prosecutions on the part of Insurance Companies against the lives of the citizens of our State.

Now, how could he get it? How could he get the Insurance Company to pay it to him? Suppose he took that policy and walked up to the Insurance Company and said, "here is a policy, payable to Margaret Elizabeth Conoley; I am D A. McDougald, it is not transferred to me, but you pay it to me." Do you reckon he would get it? No more than you or I; not a bit. Suppose then, gentlemen, that Lizzie Conoley were to die; would he get it that way? Not at all. Why not? Because, gentlemen it is in evidence here that Lizzie Conoley has a child who would first take it under the law; and if she had no child, or if that child be suddenly stricken to death, would he get it then? Why, no. She has a brother and two sisters who would take it, and she has not only a brother and two sisters, she has a mother; you could not expect him to get that money through any ordinary channel of the law, not much; you could not expect the Insurance Company to pay it to him. Then, I ask you this question: How on earth would he get it? That is left to the Insurance Company to show you. There is no evidence that Margaret Conoley is crazy; no evidence that Margaret Conoley does not need this money; no evidence that she don't want it; no more evidence that she don't want it than that the Insurance Company has paid it. Then I say, gentlemen, that this is not a reasonable motive, that there is no motive in this case, none on earth; and if there is no motive here, I say, without any fear of doing you any wrong, for I tell you now I would not

intentionally do you wrong, I have respect for the oath you have taken; I would not have you men to come here and deliberately perjure yourselves by reason of anything that I say to you, but I do say this: I say here that if there is no motive in this case that you deem reasonable, that you think would induce a man of as high character, of as unselfish and liberal disposition, to commit this crime, then it is your duty to come here and tell this Insurance Company they cannot get out of paying the $5,000 this way.

After we leave the motive, which is the life of this prosecution, and if it is destroyed, like all other things that have a heart which is destroyed, soon the body must fail, because it is the heart that is the life of everything; it is the life to all that exists in nature; it is the life to every species of animal; it is the life of this prosecution. But to leave that and go further, to show you what kind of testimony the State of North Carolina is using here, to show you how this Insurance Company is trying to steal a verdict from you; to show you how unfair it is; to show how they have imposed upon the oath that you have taken, and how they imposed upon the solemn duty that you owe to the defendant in this cause, let me call your attention to the testimony of Henry Smith. And before doing that, let me call your attention to the general character of the testimony both on the side of the State and the defendant, and that is this: I ask you, who has brought you here the cleanest, most respectable testimony, the State's witnesses in this cause, or those for the defense? And when I ask you that, I ask you to name to me a witness for the defense whose character has been proved to be bad before you; name to me a witness for the defense from whose character you judge that he might be induced to come here in this court room and swear to a deliberate falsehood. Name him. The Insurance Company itself cannot name him, let alone honest men like you. How about the State? Ah, gentlemen, did you not feel wronged? Did you not feel that you were not being dealt properly with, when you saw the character of those State's witnesses assailed successively; when you saw that some of the State's witnesses were disputed so positively, so pointedly that you could not have a doubt in your mind that they were stating falsehoods in what they said. I felt badly for you, I did; I felt it for this reason, because I believe—and I believe it with all my whole soul—I believe it is the duty of the State of North Carolina, when it comes here and asks you to take the life of a man that stands so fair as this, to bring to you testimony that is equally respectable, to bring to you witnesses whose characters stand as high as his, to pit equal against equal; certainly don't ask you to do a thing as they have done in this case, such as knock a brick wall down with your fist, and that is about the likeness of the characters here in a great many instances; not that we say that there are not men of good character who are witnesses for the State, because I am glad to say, as always will be, that there are witnesses here on the part of the State of North Carolina whose characters are not surpassed by that of any man I know, but whose characters do not surpass those of the defense.

Then, gentlemen, let us look at the testimony of Henry Smith. What is he over here for? Why, to prove that the man who was seen going from Shandon out towards Simeon Conoley's home, who looked to be black, and who, I say from this testimony here, in reality was as black, was a white man painted; that is what they brought him here for; and I had just as soon believe that you twelve men here would render sufficient credence to the testimony of that negro to produce conviction in your minds of the truth of what he said; why, I had just as soon believe, gentlemen, that one of you would come here now, without ever having seen the defendant, and without being in that country at all on the 21st of April, and swear to the same things that Henry Smith did; I had as soon believe that one of you men would perjure yourselves as to believe that you will believe the testimony of Henry Smith. I am honest in my estimate of his testimony, and I believe you cannot fail to be similarly impressed. He stood here and told you that on the 21st of April, about 2 o'clock in the afternoon, a man came from down towards Shandon and from the direction of the house in which Mr. Jeff. Cobb lived, passed by him as he stood in his cart; had come to the field that he

was just driving out of, about eight feet away from him; that he had no beard; no specs; but had a duster, a package of some kind, a valise or grip and an oil cloth done up on a stick across his shoulder, the stick being held by his right hand; that he limped, and he saw, as he nodded to him, white spots on his neck and white on the knuckles of his hand, that he passed by him and went on towards Mrs. Humphrey's; that he had on a white duster. Now, gentlemen, how many swears do you give a man for one thing? I have a right, I think, to claim here that you don't give a man but one swear, and that you make him stick to what he first swears, and that every change that he makes in his sworn testimony shall be a damage to his testimony. I think I have a right to say that, because he has sworn to say the truth, the whole truth and nothing but the truth. Then I have this to say for Henry Smith: If he told the truth here during the sitting of this court, he did not tell the truth at the Mill Prong trial, and if there, then he did not tell the truth here; and I believe, gentlemen, that he told the truth at Mill Prong, because up to the time of the Mill Prong trial, when the air of the country was pure, and no Danielses were floating around in the country; before the Mill Prong trial the New York Mutual Life Insurance Company was not prosecuting, ah! no. It has come out here in evidence that I was the prosecuting attorney in the Mill Prong trial against men that I have no hesitation in saying, from the evidence here before us, that I have reason to believe are not clear of this murder. I propose to argue that to you before I am through. Not, gentlemen, from anything that is testified to here, but because the only motive that has ever been told you, that you, in my opinion, could consider as one sufficient to induce a man to commit the crime, exists as to one of these men who talked to Henry Smith. I say that we have every right to say that Henry Smith told the truth at Mill Prong, not here, because then it had only been a few days since he saw the man he spoke of; it had only been a few days after what he saw was born in his memory; his imagination had not had time to take wings; he had not been biased by any outside influence. It was since then we had detectives scouring our land, searching the houses of the community, driving from one quarter to another, wresting the law from its purposes by taking out papers for the purpose of searching, or by having none at all, which I suppose was the case, for I tell you that I do not believe that in Richmond, Robeson or Cumberland, or any other county of our State, we have Justices of the Peace who would undertake to give a man a paper to do something with he had no legal right to do under any circumstance, as the search was not warranted by law, and could not have been warranted by law because there is no law for securing papers for such a purpose.

Gentlemen, here is what Henry Smith swore at Mill Prong—you heard Mr. Charles Purcell say that Henry signed it, you heard him say that it was read there to Henry Smith, that it was written down in his presence—now, listen to it: "I, Henry Smith, being sworn, aged 21, say, I saw a man, did not look like anybody I ever saw, had on a duster and wide-brimmed hat, a moustache and a little beard under his chin." I submit to you, in all fairness and honesty, that the testimony of Henry Smith here was that the man had no beard that he saw; that was his testimony here in this court; here he says, "had a little beard under his chin. He was on the opposite side of the road from me; I saw him in Mr. Jeff Cobb's lane about 2 o'clock, had on specks." I submit, gentlemen, that there has been no testimony of the specks here save from the mouth of Fanny Mears and Mrs. Humphrey; I submit to you that Henry Smith, here, in this court, said that he had no recollection of any specks. I am not trying to pervert this testimony, it is your province to correct me with your recollection of it. I have tried hard to recollect it, and I don't believe I have made any mistake. "A slim man, tall and slender, had a valise and a stick run through it on his shoulder—(signed) Henry Smith." I have read to you every line of his testimony. Did I read to you anything about white on the hands, white on the neck of this man, that he saw? Did I? No, it is not down there; no man can read it from that paper. Then, are you going to allow witnesses who are brought here by the State to swear at one place that they see things and at another

place that they do not see certain things. No, no; the life of a good man is at stake, and you, I think will demand the strictest proof; you will demand such proof here from the State of North Carolina, as would relieve you of any shadow of suspicion, or any mistake on its part. I state here that you cannot be satisfied that the testimony of Henry Smith in this Court is not a mistake, you cannot be satisfied that there is not some bias about that witness. Aye, further, are you satisfied that he has not talked to Mr. Daniels? I am not. No. No. We won't act on evidence like that, gentleman, brought here by the State of North Carolina. Don't you deem it a duty here that you owe to the defendant to become doubly cautious in the case? Don't you deem it your duty to look at the testimony of every man cautiously? I say here that you cannot be too careful; you cannot, gentlemen, any more than Pontius Pilate did, dip your hands into a bowl of water and say, you wash your hands of the blood of this man, and turn his life over to the public executioner. No, he did not have the right to do it, he did not wash his hands clear of the blood of your Saviour and the Son of God; nor can you. Right is right and wrong is wrong and always will be.

Is that all? I take that testimony up, gentlemen, as a very strange feature in that trip from Shandon that the State talks to you so much about. Now, I ask you to offer this question to the State of North Carolina in its arguments; tell them to name any two witnesses who, between Shandon and the home of Simeon Conoley, describe any man alike; tell them to name any two witnesses, make them do it, and while you are doing it, gentlemen, I ask you what is your recollection of the testimony? I tell you here, upon my recollection of this evidence, that no two witnesses who have been sworn before you here in this cause name or describe this person that they talk to you so much about in the same way. If it is the same person, why in the name of God cannot he be described in the same way every time and everywhere? Why is it? You have a right to ask that question, and it is fair to the defense that you should ask it of them, gentlemen of the jury. I have a right to ask you to ask it. But more. Is that the same person that Charlotte Dumas saw get off the train at Shandon? If you say it is, you say more than any witness in this case has said. Name the man, woman or child who has said here in this case that this man that Henry Smith undertakes to describe, and describes in two different ways,—that he contradicts himself about,—name the man who tells you that this is the same man that Charlotte Dumas saw. Not one. And, gentlemen, the State of North Carolina is asking you to see more than its own testimony does. Now, let us see if it is the same man. What did Charlotte Dumas say was the looks of the man she saw, and how far was Charlotte Dumas from the man? Charlotte Dumas was one mile from where Henry Smith saw that man according to the evidence, one mile away; and she says she saw a man in Shandon who passed her with a white duster on, who had no beard, who had a grip sack strapped across his shoulders, who had on dark clothes, who had no specks on, who was not carrying any bundle on his shoulder. You have heard what Henry Smith says. Was it the same man? If that was all, gentlemen, would you be compelled to say he was the same man? The State says we will supply the openings within that mile, we will show that it was the same man, and how? By describing a man different from what Henry Smith or Charlotte Dumas described. We will tell you of a man who did not look like the man that Henry Smith saw, and we will tell you of a man that did not look like the man that Charlotte Dumas saw, and we know that will satisfy the oaths of this jury that the man that Charlotte Dumas and Henry Smith saw was the same identical man, only one man.

Now, here is the way it does it: Take Charlotte Dumas' testimony; she says that she was some two or three hundred yards away from the depot, living in the section house; that this man got off the train and came by her house, nodded to her, started down the side track, left that, turned off on a path that went out there through a field to where Graham lived, on which they got water. That is Charlotte Dumas' testimony, in her words, I think, exactly. What does this man say now, gentlemen, at the depot? Capt. McPhail says, "I saw the man; might have been white; think he was;

I would not swear that he was white, because I only had a casual glimpse of him. I was talking to Capt. Murchison, one of the officers of the Cape Fear & Yadkin Valley Railway, and had only a casual glimpse of the back of a man with a dove-colored duster on. Charlotte's man had white duster on; Capt. McPhail said that he saw no package, no valise, no grip-sack strapped across the shoulder of the man he saw at the depot. Is that Charlotte Dumas' man? Why, no. Don't you recollect that Charlotte Dumas said the man that she saw turned off on the path by her house; that she and others went on, to go over to Mr. Graham's to get water; that the man turned off on that path and went out on that path across the field to Graham's house to get the water. McPhail says he saw the man within 30 yards from the depot, not on the path; why it was not in 30 yards from the depot, the path was two or three hundred yards from the depot, the one on which she went to get her water. Furthermore, the dusters are not alike. Charlotte's man had a grip-sack across his shoulder; Capt. McPhail's man had no grip-sack; Charlotte's man had a white duster; Capt. McPhail's man had a dove-colored duster. Where did the Captain's man come from; nobody has seen a man get off that train at Shandon; no witness has sworn that they saw a man get off that train; that is the presumption that they raise from that, that Charlotte Dumas says she saw a man at the section-house Capt. McPhail says that as to whether the man that Charlotte Dumas saw got off the train and then passed her must depend on where the train stopped. No evidence here that that train stopped at the section-house, is there? None whatever. They had a pretty good train on that morning of about fifteen cars; that is the testimony.

Two different kind of men are seen. What is the next scene? Jeff. Cobb, about three-quarters of a mile from Shandon, or between a-quarter and a-half mile from Capt. McPhail's house, with the field open on both sides, with the exception, as he says, of a little woods that stands there for a space probably of one hundred yards next to his house, on the right hand side of the road, as the man came from Shandon; that is the testimony. With the exception of about one hundred yards of woods, right on the right hand side of the road, it was a big, plain, public road down which the man is coming. When he sees the man, he says he sees a black man. Now, I ask you, can you say here that you are satisfed beyond a reasonable doubt that the man that Jeff. Cobb saw was the man that Charlotte Dumas saw; or do you say, beyond a reasonable doubt, that you are satisfied that the man that Capt. McPhail saw is the man that Jeff. Cobb saw? Do you say that these two men are really but one man? If you do, I want to ask you one question: Where under heaven did he black? Do you think he stopped in the public road and blacked his face? No, gentlemen, you don't conclude that, because here is the way to judge that testimony. If you or I were going to black our faces for the purpose of committing some crime would you sit down in a big road, where houses and fields are on both sides of it, and there black your face? No. Jeff. Cobb was there in the road; Fannie Mears was going down the road; Henry Smith was there a little further, some 100 or 150 yards further up the road; Fannie Mears and Henry Smith going down the road; if they saw him coming out of the woods, why did they not say so? There are three witnesses, gentlemen, who had their eyes on that road; Fannie Mears coming directly down the road, Henry Smith coming down that road, all going towards Shandon from the direction in which they saw this man come, in full view of the road. Yet, gentlemen, not one of them states that that man ever left the road. They say that he was on the road all the time; that he did not go out of the way; that he did not shun anybody; shunned nothing, but walked deliberately on down that road; that it was a bright, open, sunshiny day, about 2 o'clock in the day time.

Now, let us see how long he had to black. They say he did black; that one of the white men seen at Shandon did black before he got to Jeff. Cobb's. How much time did he have? It was between 1 and 2 o'clock when he got to Shandon, if he came there on that train; it was between 1 and 2 o'clock when the train got there; and that is when they say it was that they saw the man,—after the train came. It mus h ive been afterwards because Capt.

Murchison had gotten off the train and was standing there in the depot. We know that the train was in Shandon sometime before this man was even seen there, within thirty yards of the railroad. So I say, gentlemen, that he must have been there sometime inquiring about the business; I suppose, as we have reason to presume, that Capt. McPhail had finished with the train; he had finished with the freight that was to be delivered to him by the train, because he was on duty there as you all know; he was on that platform checking off on his bills of lading the freight that was given him from the cars, verifying the freight delivered to him, when he quitted that place of duty and was in an office talking to an official of the road. So, gentlemen, the train had been there sometime. Now, whose duty is it, I ask you, to prove to you that this man blacked himself between Jeff. Cobb's and Shandon? Whose duty is it to prove to you that he had ample and sufficient time to black himself between Jeff. Cobb's and Shandon? I submit that it is not the duty of the defendant; he is innocent until you say you are satisfied beyond all reasonable doubt that he is guilty; the law says he is not. Then, gentlemen, it is the duty of the State of North Carolina to prove that to you, and not only to prove it, but to prove it here in such a way as to satisfy you beyond all reasonable doubt that he did black himself, that he had time to do it, and that he blacked himself in the public road or in the woods. You have a right to demand that they should tell you which place it was, and that he was the same man that was seen at Shandon, and that he was the man that Charlotte Dumas saw; the man that Capt. McPhail saw, and then say that that man was D. A. McDougald.

Now, gentlemen, follow it link by link; it is the best. The kind of passion that the State went into awhile ago is not the way to get a verdict from this jury. I will discuss every stage of this testimony. Was it D. A. McDougald? Charlotte Dumas saw him. Did she say that the man who spoke to her, and passed by her house within a few feet of her, who turned from the railroad and went down the path, who had a white duster on and a grip-sack across his shoulder, was D. A. McDougald? No, she did not. Will you do it? If you do, you will do more than Charlotte Dumas did; she won't do it; she won't undertake to swear it, and in heaven's name have I not the right to say that this jury won't undertake to do what the witness herself won't do? I believe I have. Gentlemen, I will do it; I believe I may say for this jury that this man was not D. A. McDougald, according to the evidence in this case. Now, what follows? If that was not D. A. McDougald, was it D. A. McDougald that Jeff. Cobb saw? Jeff. don't say so; he has had his say; Jeff. has been brought here and has spoken upon the witness stand and faced this prisoner, and he has not said that it was D. A. McDougald; he has had his chance to say it, and if he won't do it, will you do it? Why, Jeff. Cobb don't even describe the man that left Shandon, not a time. What is Fannie Mears' testimony? Fannie is a new bird in the case; she has been discovered, gentlemen, since the Mill Prong trial. Who found her? Oh, well, I reckon Mr. Daniels found her—a recent discovery on the part of the New York Mutual Life Insurance Company, Fannie Mears; she is brought here, what does she say? She says she met a man coming from towards Mr. Jeff. Cobb's house as she went to Shandon; that it was a curious looking man; that he had a black face; that he had on specks; that he had on a white duster; that he had on great, long side-locks; that he had a bundle on his shoulder; that he was walking on the road towards where it is said Henry Smith met this man, and where Mrs. Humphrey lives and where Neill Smith lives. Now, gentlemen, Fannie Mears had the opportunity; the State of North Carolina had her here for the purpose of identifying that man as D. A. McDougald. Did she say it was D. A. McDougald? No, she did not. Well, if Fannie Mears won't say that that was D. A. McDougald, will you say so? Why, gentlemen, the State, when it asks you to say that that man that Fannie Mears saw was the man who sits here before you to-day, asks you to say more than any witness has ever told you. Another time we will consider Fannie Mears. Why have we not heard of Fannie before? Is this the first investigation of this matter? Ah, no. No. Dr. Lewis tells you as coroner of the county of Robeson he investigated this murder. Fannie

Mears tells you that she was not examined in this case before, that she has never been examined before to-day in this case. Then who created Fannie? Who found Fannie? Why, gentlemen, the Justice ot the Peace who tried this case at Mill Prong could not find her; she was not known to them; if she had been, don't you know she would have been there? Jeff. Cobb was there, Henry Smith was there, Mrs. Humphrey was there; hosts and hosts of witnesses were there; then I say, why could not Fannie Mears be found; if she told what she saw and heard, don't you know she would have been known of; don't you know it would have been communicated to these Justices of the Peace, who were anxious to investigate this killing? But, no, not a mortal soul knew that Fannie Mears knew what she said here in this court. We heard nothing of her until Mr. Daniels took his trip, nothing at all, not a thing. Now, I ask you this question, gentlemen: Don't you require here in your investigation of this evidence that when a witness wants to come and testify that a man blacker than anything she ever saw passed her on the road; that he was curious looking, more so than anything she had ever seen before, she should not keep all this a secret for month on top of month? Did she do what you would do, tell what she suspected and thought? Would you not do it? Would not every man on this jury, who saw a man of that description pass you on the road, tell your neighbor right away? Why, it is your duty to tell him that he may be on his guard in case there was a lawless man in the community. Yes, gentlemen, you would have done it; Fannie would not have gone all the way to Shandon and all the way back home and told nothing. Fannie, whom did you tell? I told my father about it, when I saw him at home. Now, gentlemen, I want to ask one question, where is that father? I will tell you he is hard to find, or Mr. Daniels would have found him. The State did not show you that daddy; ah, no, but it knew this, it knew Fannie ought to have told it; knew it was Fannie's sworn duty to tell that she had seen this man, to tell it to somebody; and it thought it would just take a jump and risk where it would fall; it would risk your catching it in your arms, or kicking it off with your foot; and when they tell you she did tell her daddy and then not bring the daddy here to prove it by, is that fair play? No, you know it is not. You have a right to ask more, you have a right to ask all the evidence that the State can bring here.

What is the next? Mrs. Humphrey. I would not say, gentlemen, that Mrs. Humphrey has told a wilful falsehood in this case; she has done what many of us have done before, she has forgotten some of the things that she saw; her demeanor on the stand warrants me in saying that she has not told you any deliberate falsehood, and I say, although her testimony was not introduced by me, I do not believe she told you any deliberate falsehood. She has heard Fannie Mears tell what she saw, heard Jeff. Cobb tell what he saw, heard Mr. Neill Smith tell what he saw, and in all probability she has heard what J. C. Conoley says he saw; those witnesses that the State have introduced,—mind you, they don't introduce anybody by the name of Conoley; oh, no, that is too different, they are situated too far from that side of the prosecution. No, but Mr. Smith says that Mr. J. C. Conoley was there with him, and she has heard all those neighbors who live right around there in a thick nest on the road tell what they recollect to have seen, and the poor woman has a vague impression that she heard and saw what she said here. Now, I will read you from her Mill Prong testimony. Mrs. Humphrey says: "I saw a man pass the road, was a black man, I took him to be a negro; was tall and slender, had on a duster, wore glasses, had a sack on his shoulder, oil cloth over it; about 2 o'clock when he passed my house 1¼ miles from Shandon." Now, gentlemen, that was her testimony. She was asked if she had not said that she took the man who passed there within eight feet of her—she standing at her gate which opens right out into the public road—to be a negro? She said she had not said it. It shows, gentlemen, the extent to which the public mind has been poisoned by this Insurance Company; it shows how this prosecution has exerted itself to poison the minds of even the good women of this country. Mr. Purcell says she said it; she signed it there in her own handwriting, and said she said it; she

signed it after it was read to her; she said it after she had sworn. I state that, gentlemen, not for the purpose of showing you here that that poor woman has told a falsehood, she has made a mistake; she has not lied; a lie comes, it strikes me, from a soul that deliberately makes a false statement, knowing it to be false, that is what you treat as a lie. When a person says a thing and thinks he or she is right, even though they make a mistake, they are not criminal to me. I think that this is the only thing that caused her testimony to be what it was; that the most important thing that that woman testified to either here or at Mill Prong, or before the coroner or anywhere else where she may have ever testified, we find to be different at Mill Prong, showing you, gentlemen, that it is dangerous to rely upon circumstantial testimony at any time, because witnesses will make mistakes; you are relying upon your recollection of little incidents that at the time really make no marked impression upon your mind, and they are liable to be changed by hearing what other people say they saw and heard.

So, gentlemen, I know that you cannot say that that man did not look like a negro; Mrs. Humphrey said, at Mill Prong, it was so; she said that when her memory was fresh; she said it on the 7th day of May, 1891; Simeon Conoley had only been dead since the 21st of April, only been dead a day or two more than two weeks, when she said that; inside of three weeks from the time she saw this man she made this testimony. Then the lady has been mistaken here; her memory is at fault.

Is that all? Oh, no. Mr. Neill Smith is next introduced; he testifies that on that day of the 21st of April, about 2 o'clock—he lives two miles from Shandon—this man came walking from down the road towards him, he and John C. Conoley stood talking at the gate; that he was not more than eight feet away from him, and that he don't recollect that he had any beard on his face; don't recollect the beard at all, but saw a man that was black, a man with a dove-colored duster on—the only witness who agreed with Capt. McPhail that he saw a man with a dove-colored duster on,—who had a satchel strapped across his shoulder; that he carried his satchel on a stick over his shoulder, with something in his right hand; that his house was on this side of the road, that the man was on the opposite side coming from Shandon with his right side towards him, that he had on a broad-brimmed hat, that he did not notice his hair, and he does not say what kind of pants he had on;—and while we are speaking about the pants, Jeff. Cobb, Charlotte Dumas, Capt. McPhail, Fannie Mears, Henry Smith, nor Mrs. Humphrey, neither one have said anything to you about the color of the pants, not one time, gentlemen, they don't prove the color of the pants a single time save one. They prove that the man with a black face had on dark pants by Sallie Wilkes, and that is the only witness who tells you anything about the color of the pants. So, then, Mr. Neill Smith differs in his description of the man from Mrs. Humphrey. Now, gentlemen, if that man was passing there on that road with a beard on—and that a false beard—have any of you ever seen a false beard? with a false side-beard on, within eight feet of him, do you think he could have failed to notice it? I will venture to say here that there is no man on this jury that would hesitate to say that if a man were to pass within eight feet of him with a false side-beard on, with a on, wig or with a false full beard on his face, or with both a beard and wig on, and his face painted with lampblack, walking right in the broad open sunshine, that any man of you would say that man could not go by you without your detecting the imperfection of his disguise, and I think you would say furthermore, if that man expected to go about that way he was a fool, and I will agree with you in both instances; so, gentlemen, there is no doubt about the fact that Mr. Neill Smith has stated that that man seemed different from any man who is seen by any of the witnesses before he did not see any side-beard; did not notice any beard at all; well, he noticed a dark man walking along with a bundle strapped across his shoulder; could not tell you about his hat any more than that the man just had on a hat. Mr. Smith tells you that the defendant here had lived there in his country until the time he had grown up to be a good-sized boy; that he had not seen him many times since then, don't say positively he has seen him at all; that he knew nothing of him

since he left the country where he lived, but that he will say this, that the man who passed the gate was a medium-sized man, about the same size as the defendant, D. A. McDougald. That is the testimony of Mr. Neill Smith. Now, gentlemen, call to your recollection the testimony of Mr. Smith and I will ask you this question: Did Neill Smith tell you here one time that the man he saw there, and of whom he spoke in this court-room, was the defendant, D. A. McDougald? Not one time did he say so; he said he was a man about the same size as he—a medium size. Does he tell you anything peculiar on the knuckle? Does he tell you anything about the way he holds his shoulder? Anything about how he carried his arm? Anything about the proportion of his body? No. Does he say, gentlemen, that a view of the man's face reminded him of the face of this prisoner? No, he did not say so. Will you say that it was so, when Neill Smith won't say it? I think not, nay, I know not.

Is that all? They say, "We have it now for certain; why we have a negro over here, John Conoley, colored, who has seen a man blacker than he." Now, he is a wonderful man; I will admit that they have the right to crow over John, just a little bit; John Conoley has seen a man blacker than he was, that shone or glistened more than John did; "why, gentlemen, I have seen a man that was different from any of them that testified yet; different from Mr. Smith's man and all the others all the way back to Shandon; I have seen an entirely different man; I have seen a man with a full beard on, as you heard him tell here in this court-room, a long full beard;" no other witness has so described that beard; further he says and he used these words, "I saw a pack tied on to his breast;" now those are the words; what he meant by them is for you to say, not me; I suppose he meant a pack tied on to his back across his breast. He stopped and asked him how far to the Fayetteville road. "I told him as near as I could." "Will your dog bite?" "No, boss, he won't bite." But he could not see him very distinctly and he could not say who he was, and he does not say that that man was a white man blacked, nor does he say the man that he saw was the defendant, D. A. McDougald. Will you say more than he said; will you say he saw more than he says he saw? No, gentlemen, no, the State of North Carolina wants you to say the defendant was the man that John Conoley saw; they have not proved it to you; it is their duty, and I believe you will demand it before you steep your hands in the blood of a man as pure and honest as this defendant.

Now, gentlemen, I am sorry that I am called on to comment upon the testimony of Miss Wilkes; not for any fault in the poor girl herself; no, Sallie is not the Wilkes that has gone over the country following Daniels, the Insurance man around; not Sallie, but Sallie's daddy. I must say, gentlemen, that her testimony was different here in this court, from what it was at Mill Prong; it was different, the girl has contradicted herself. I don't blame her, ah, no; I don't do that; but I say, gentlemen, that I condemn that father; I charge him, not only with having carried, led and guided Mr. Daniels, the Insurance Agent, around through that country, but, furthermore, that he, for reasons that he knows of and that we do not, has tampered with the evidence of his daughter. I charge him—for I believe it with my whole soul. Tell me that that girl would change her testimony without some cause! Does she change it in any immaterial respect? No. Why, gentlemen, she changes it in its most important feature; the change she makes makes her testimony different from what she has ever told, and I ask you if I have not a right, if you must not suspect, that that father who rode that Insurance Agent over that country, or the Insurance Agent himself went with the father and talked to this girl until they have befogged her recollection about the matter; until they have gotten her to take their recollection about this, and their statements about what she saw. Oh, gentlemen, it must be that; it must be, for if it is not that, she has not told the truth. Let us make it that and not the other for the sake of the girl; for her sake let us do it; I ask that construction to be placed upon the testimony, because it is reasonable. Why, gentlemen of the jury, would not the New York Mutual Life Insurance Company tamper with a witness, when it would walk here

into your court-house and ask you to hang a man for some $5,000? I say that we have a right to suspect John Wilkes, the father of this girl, Sallie Wilkes, that he has been talking and saying things to this man Daniels that he don't want you to know of; and for this reason, we have a right to suspect him, because he told you he did not go anywhere with Daniels, because he told you, gentlemen, that he did not know anything about the man who came to his house one time, because he told you that he never talked with an insurance agent that he knew of. Tell me that this man Wilkes would lead a man over there to the house whose people are bowed in mourning over the son who has been so foully murdered, and not know who he was! Would he be leading there a stranger, the purpose of whose visit he was in total ignorance?—and when you tell it to me, I will tell you that the man who would do that can find no meaner man than he. It is true.

John Wilkes, when he told you here that he did not know that insurance man; that he had not had any talk with him, but that he had been to his house, did not tell you the truth. You must be satisfied of this; and can you fail to be? let us see whether you can or not. Eddie Conoley says it was so. John Wilkes came back upon the stand; he does not for one instant say he did not go over to Effie Conoley's house. Now, I ask you, who would tell the truth the quickest, a man who had been associating with Daniels, who had been leading him over the community, who came here into this court and allowed his daughter to tell a different story from what she told when she was formerly sworn in the trial and investigation of this matter, after Mr. Daniels had been to his house, after he had taken his visit over the community, or this old lady, who, gentlemen, totters over the grave that is before her? Who would tell you the truth? Who do you believe? Oh, gentlemen, you must believe Effie Conoley, you can not fail to do it. I tell you I will believe her, aye, I believe her as much as I believe that there is a God that rules this earth. I believe her as firmly and sincerely in what she said here in this cause as I believe in the goodness and mercy of God Almighty. I belive her; there is no reason why we should not believe her, none; she has been here 86 years full of trouble; 32 stricken with affliction, 10 or 12 years confined to her chair, unable to walk and attend to her home wants. If we have a right to think anything from these facts, gentlemen, we must think that the bed of sickness on which we have all seen her during this trial, if not the last that she will be called to suffer upon, is near it; that she will not be called on to endure much more of the trouble that has been hers in this life; that she will not be called upon in any way or at any time more solmnly to speak the truth than she has been in this trial. Tell me that that old woman could be induced to come here and prove so false to the memory of that boy that she has lying in the grave, stricken by the hand of an assassin, as to wilfully undertake to shield the man who robbed her of the boy she loved from the punishment that the law would inflict upon him! I tell you that if that were so, I would believe no more in the honesty of mankind, and I would never believe in the truth of words that fell from mortal lips, never; never.

Gentlemen, what does she tell you? She tells you that whoever may have been the man that Sallie Wilkes saw, whoever may have been the man that John Conoley, col., and all the other witnesses, from John Conoley back to Shandon, saw, that it was not D. A. McDougald that robbed her of her boy, and wrung her old heart, already bowed down with age and sorrow from many afflictions and troubles before this. No, she says, "gentlemen, it was not D. A. McDougald; why D. A. McDougald was kind to me; it was not he. I saw the man who laid his hand so heavily upon my heart, when he snatched from the body of Simeon Conoley his life. I saw him, gentlemen, whether D. B. McLauchlin says so or not; I saw that man and I saw him about 10 feet from me only, on a night that was as bright as day; and I say here that that man was taller than Simeon Conoley, and Simeon is much taller than Daniel A. McDougald. It was not Dan. McDougald; it was not his voice and I was not deaf then." Aye, gentlemen, you heard her say that she was not deaf on the night in question. "I was not deaf until four or five weeks ago, when I took this cold, and I say the voice that called was not Dan's voice; I saw the body and it was not his shape."

Do you believe that T. E. Phillips told the truth here? If you do you believe more than I do; you believe more than any man, I venture to say, outside of sympathizers with the Insurance Company who stands upon the Court House floor. Do you believe an extra train ran, as testified to by T. E. Phillips, on the morning of the 21st? You dare not believe it. Now, why? Because the book of the record of the trains that should have recorded it, that would have recorded it, says it did not run; because the master mechanic of the Railroad shops says that T. E. Phillips, according to his record, worked in the shop that day; and of all the people who live along the line of the C. F. & Y. V. R'y, from Maxton here and from here to Maxton, T. E. Phillips is the only man who is willing, or whom the State or this Mutual Life Insurance Company can get to come here and say that those books have lied. He is the only man who will come here and tell you that that train did run on the 21st. Why, gentlemen, what has become of the agents all along the line of the road? If it ran could not they prove it? T. E. Phillips was not safe with the death of his conductor. If the old man had been alive it would not do to have told that the extra ran, because the conductor would have told different. With the poor man lying out in his grave he thought he could come here and tell you, and he has told it, but it won't go. Oh, no. It won't go. That train did not run; that conductor who went out there would have registered as the rules of this railroad require. It was his duty to do it; he was following a very dangerous rule if he did not. If he had not registered, would not the engineer have registered that train as it was his duty to do, and if the engineer and conductor had both forgotten it, would not the operator have recorded the time for the train's leaving and the arrival of the train? Ah, gentlemen, is it reasonable to suppose that all three of these men would have failed in the performance of their duty, would have violated a strict rule and a rule that would entail danger to the public by its violation? I say you must believe that these men would have violated that rule, or you must say that T. E. Phillips has told what was not so, or he has made a most fearful mistake in this case, a most fearful one,—one that I venture to say no other man would ever make, no man here; and if he has made that mistake, if he can make so great a mistake as this, if you can presume that for him, why then, gentlemen, may you not presume with equal reason and fairness to the evidence that all of these witnesses are mistaken in their recollection of persons, dates and places; it is just as reasonable.

Then, gentlemen, T. E. Phillips and the extra train is the backbone in this matter; I say it is the backbone and without it they can not get along. Now, why? For this reason: T. E. Phillips tells you that he saw the same man at the water tank at Maxton that Tom Smith says he saw, that Lizzie McCoy says she saw; now, if T. E. Phillips did not see that man; if the evidence here has shown to you that T. E. Phillips is mistaken, or has told a falsehood, then I say that we have the right to argue to you that those others are equally mistaken. That is what they say. Tom Smith says he saw him, right there at the tank at the same place that Lizzie McCoy saw him; then T. E. Phillips says he saw him sitting at the tank, on the same sill right there at the crossing; now if T. E. Phillips is mistaken, as badly as he was mistaken—to say mistaken is to show your charitable disposition—if he was mistaken, then so are the others, because they say this man whom they call McDougald was in the same place within a few minutes of the same time, and was there on the same day. Now, if one of them here is shown to you to have stated this matter falsely, I ask you if we have not a right to ask you to say that the others have stated it falsely, and particularly so, when they come here and bring Lizzie McCoy, a partner of T. E. Phillips in this swearing, who swears to the same place and the same morning, and Tom Smith who swears to the same place and morning? We believe it is the duty of the State to show them to be either of good character, above suspicion, bias or mistake in testimony, or else you reject it along with T. E. Phillips. Is not that fair? God knows I would not ask you to do anything wrong, but I believe I have a right to ask you to reject the testimony of those witnesses who put D. A. McDougald,

or this man, whoever he was, at the tank at Maxton, at the same place on that tank, on the same sill on the same morning and within a minute or two of the same time. I say, when you lay aside one of them, the others must lie in the same bed. Is it not fair and right? I believe before high heaven it is right.

Is that all? Then, gentlemen, what does Mr. Cole say? Why, Mr. Cole says that there was a man there; no doubt, gentlemen, but what there was a man talking to Mr. Cole; it was the same morning when he went down to the tank and sat down on that same old sill, and that he saw Tom Smith, and that when he was there the man called himself McDougald. Now, Mr. K. H. Cole is a man of intelligence; you have seen him; he is in charge of a responsible position; he is section-master on a railroad that is much traveled, that has a large freight over it, as we all know; and Cole says here that he can look at this defendant and that he will say to this jury, "I will not swear that this defendant is the man I saw." Now, I ask you, if you are going to demand of the State all that the law says you shall demand from the State, to prove beyond a reasonable doubt that that man was D. A. McDougald even in Maxton; prove beyond a reasonable doubt that it was? Now, I say, gentlemen, that it was not he. I say, gentlemen, that according to this testimony, it was not D. A. McDougald, because if it had been he, K. H. Cole would have recollected him; if it had been, K. H. Cole would not have forgotten him, could not have effaced his face from his mind. But he says this, "considering all the rumors I have heard, all the many descriptions that have been given me of Mr. McDougald, and letting them come in and assist my recollection, and letting those rumors form part of my recollection, then I would say that the defendant does look something like the man I saw, but I won't swear he is the same man." Now, you are not called on by your verdict, gentlemen, to say that he looked like D. A. McDougald; you are called on to say that he is D. A. McDougald or is not. Now, what is the testimony? Witnesses say that that man looked like him, but I won't swear to the identity of the two men. Does that testimony satisfy you sufficiently for you to come in here and on your oath say that it was the same man? Now, gentlemen, that was not D. A. McDougald; if Dugald E. McNair has told you the truth, that was not D. A. McDougald. Why? Because K. H. Cole tells you that it was 7 o'clock that he saw this man up there where he was, at this section-house. Dugald McNair said he got to Alma at 7.10 that morning; that is his testimony; if it is not, let him correct me, let any man correct me. The counsel for the State has said it was two and a-quarter miles from Alma to the water-tank, to the place where K. H. Cole was. Yes, gentlemen, it may be two and a-quarter miles off with the town of Maxton between them. How in the name of heaven could he be with Cole at 7 o'clock when he was at Alma at 7.10? Now, I ask you this question, you can answer it upon the evidence and answer fully and satisfactorily. Is there a mortal man who came here for the State and swore that McDougald did not go to Maxton on the morning of the 21st? Not one; and Archie Cottingham said he went to Maxton; he knows, but he did not say he did not go to Alma; and Luther McCormick says he went to Maxton; that he saw him there and that he talked with him, and that he talked to him about what time the Fayetteville train left, but he did not say he did not get on that train and go to Alma. Where are the other passengers that went to Alma? There are none. The State has actually proved it for us; have proved the testimony of this honest man, against whose character they could not, even with their detective Daniels, produce a man to say he was a bad man. That report shows, gentlemen, that no man went to Alma that day who paid his fare. Dougald McNair says he passed Dan. McDougald; that he is a patron of the road; a christian gentleman, liked his company, and he passed him as a kindness that morning to Alma; they were old friends. He is not the first conductor having done that. Then, gentlemen, I say that until they bring you here somebody who says that that man did not go to Alma, you must believe this positive evidence that he did go to Alma. Dugald is not unsupported. No. He has brought you here his train man, a man working

on the train with him, and that man tells you that Dan. McDougald did go to Alma, and that he went there on the morning of the 21st; then, gentlemen, if he went there on the morning of the 21st and got there at 7.10, he was not the man who talked to K. H. Cole at 7 o'clock, up there where he was working at the section-house. Now, gentlemen, that can not be gotten over; have I not repeated the evidence correctly? If I have not, I have made the biggest mistake I have ever made, because I have sat here and listened, and I thought—and I was struck with the thought—oh, how the State of North Carolina and that Insurance Company, infernal thing that it is, is trifling with the life of this man! What wrong it would do to save the sum of $5,000.

I knew, gentlemen, that that man who talked to K. H. Cole at 7 o'clock in the morning, calling himself McDougald, was not McDougald; I knew that as honest a man as ever set foot upon the top of God's earth, D. E. McNair, could come here and tell where D. A. McDougald was on the morning of the 21st at 7:10 and at all time previous to 7:10 back to 6 o'clock in the morning, and the State would not let him do it. He had to ask the defendant, or the defendant went to him and asked him to come and tell you, through his attorneys; his attorneys asked him to do it, the State would not let him do it. This is the truth, gentlemen. Now, is that right for the State? Have they tried to help you say whether this man be guilty or innocent, or have they tried to steal a verdict of "guilty" from you, by keeping away from you evidence that they could have put before you, and did not? It is a serious charge to make against our State; it is serious to make against that soulless corporation, so cruel that we almost feel that it has no soul, as it is said not to have; we must agree that it would stoop to anything to save this money and procure conviction.

[At this point court adjourned to meet the next day, November 27th, when Mr. Shaw continued as follows:]

Not having concluded my argument previous to adjournment, it becomes my duty to again appear before you in behalf of the defence. I hope, gentlemen, that I shall not tire you; that you will bear with me patiently, for I feel that I have a great duty to perform; a great burden is laid upon me, and I know that you have one; I know that you feel the duty that is laid upon you. My only purpose here in speaking to you in behalf of the defendant is to aid you, if possible, in coming to what is a righteous and proper verdict in this case; and before proceeding to the further investigation of this testimony, I want to call your especial attention here to the opinion of the Supreme Court, as laid down in the State vs. Bracksville, taking the words of the Court, and that was a case tried exclusively upon circumstantial testimony, and the Court says this: "The facts, their relations, connections and combinations should be natural, reasonable, clear and satisfactory; when such evidence is relied upon to convict, it should be clear, convincing and conclusive in its connections and combinations, excluding all rational doubt as to the prisoner's guilt." I ask you, gentlemen, to bear these words of the Supreme Court in your mind in the further investigation of this testimony, for I claim here that the testimony of the State, not only in what I have already rehearsed to you here, but in what I can show here this morning, is unreasonable; that it is unsatisfactory; not clear; and if that be so, then it would be your duty to return a verdict of "not guilty" here in this case as to the charge, showing them how carefully you must scrutinize this testimony; how much care and attention you must pay to the words of the Supreme Court, as laid down in this case, the last case decided by them on circumstantial evidence.

I believe, gentlemen, that when the adjournment took place yesterday that I was speaking to you of the impossibility of the man K. H. Cole saw at 7 o'clock, when he was there working his section hands upon the Cape Fear & Yadkin Valley Railway, being the same man that D. E. McNair saw at Alma at 7:10. I think, gentlemen, that I had showed you that the defendant was the man who went to Alma with D. E. McNair, that he had gone from Laurinburg to Alma, that his had been a continuous trip, that the only stop that was made in the trip from Laurinburg to Alma was a little stop

that was necessary on the part of the freight train at Maxton for the purpose of unloading itself of freight destined for that point. McNair tells you that he has lived in Laurinburg for about two years; that the balance of his life he spent within sight of Alma, in Robeson County, within 2¼ miles of Maxton. Not a man comes here from the home where that boy was raised, not a man comes here from Laurinburg or Maxton, where he has lived for the past two years, to tell you that he is not worthy of your full credence. On the other hand, gentlemen, the defence comes here, and it proves to you from good and true men that Dugald McNair is a man of good character, and that you may safely believe him and that you ought to believe him. I believe, gentlemen, the testimony of Mr. Dugald McNair has won your confidence and respect, and that you are justified in relying upon and believing every word he said; and if that be true, the man seen by Mr. K. H. Cole was not D. A. McDougald, and we must not be surprised that he won't stand up here in this court-room and swear that it was he. We must be glad when this testimony is brought here before you, we must be glad that Mr. Cole has restrained himself; that he has refused to swear that D. A. McDougald was the man he saw on the railroad; and if Mr. Cole don't swear it, do you? Will you go further than Mr. Cole has gone? He won't say, when he has seen the man and talked to him for fifteen mintes, he won't say anything about him. Then, gentlemen, Mr. Cole's man is not the man, Mr. Cole's man is not D. A. McDougald.

There is another reason. Because the extra did not run that day. I will not talk to you further about the extra, but it did not run; and because, gentlemen, the man who got on at that tank and who shook hands and talked with Mr. Rufus DeVane was not D. A. McDougald; that is another reason that the man who K. H. Cole saw was not D. A. McDougald. And, gentlemen, D. A. McDougald was not seen at Red Springs, as testified to by the man who was on the extra, because that man nor that extra, neither one, went to Red Springs on that day; no mortal, no record, nothing can be brought here that tells you that either Mr. Phillips or the extra were at Red Springs on this day. The records of the Railway Company says it was not upon the track that day, and the State says it has acted to you in good faith; that it has held to you a clean hand in this transaction. I say that the hand that the State of North Carolina has held to you in this transaction is bloodstained; it is not clean and it is not fair. Rufus DeVane tells you that extra did not run. He told you the truth. What else does he tell you in his testimony? He tells you that on that morning ot the 21st, as he went from Wakulla, on the freight train from Maxton, there was a man there and he talked to him; that he saw him stand up in front of him; looked at him; recollects the man distinctly; that his recollection is vivid, and what does he say? He says this man does not resemble the man he saw, and that he does not believe it is the same man. Is not that his testimony, honestly, exactly repeated to you? He does not believe it to be the same man. Why, Mr. DeVane? The State of North Carolina and this Insurance Company ask why is not it the same man? "Why, sir, because the man that I saw on that freight train was taller than D. A. McDougald, defendant in this case, because the man that I saw on that freight train was much darker complexioned than this defendant is." Have you any further doubts in regard to it? Have you, gentlemen? If you can have any doubt in your mind after hearing the testimony of these railroad men who tell you no extra ran, after hearing that testimony of T. E. Phillips swept to the ground from a respectable standpoint, and hear Rufus DeVane say that was not the same man, you, gentlemen of the jury, must say that it was not the same man; it was not, if human testimony can be believed.

Now, gentlemen, it is well enough to say here, and His Honor will so charge you I apprehend, it is the law—it is not incumbent upon D. A. McDougald to account for himself on the day of the 21st of April, either in the morning, afternoon or evening It is not incumbent upon him, for the burden in this case rests upon the State—the State of North Carolina has the entire burden laid upon it. The law, gentlemen, lays no burden upon the Insurance Company; it has come here and assumed the burden; it has come

here and said that it will raise the burden that is laid by the law upon our old mother, and it will say to the State, to the Jury, that the defendant is guilty. I say it is the duty of the State to satisfy you beyond a reasonable doubt of the whereabouts of this defendant, not his. No burden rests upon him, none whatever, and the Court will so instruct you. It is not incumbent upon him, gentlemen of the jury, to introduce one line of testimony here before you; he is presumed to be innocent until you are satisfied beyond a reasonable doubt of his guilt. So, gentlemen, I say that this testimony of the State of North Carolina is unreasonable, that it is not satisfactory; that you cannot conclude that this man got on the train after the extra passed; that Phillips was in Red Springs and that Rufus DeVane was mistaken. Now, mind you, no man has gone far enough to tell you the height of the man that they saw get on that train save Rufus DeVane; no man has told you the complexion of the man that got on that train save Rufus DeVane. You must believe him; he talked to him; he saw him, and he is a man worthy of belief. I ask you, gentlemen, in view of the testimony here brought out by the State, which says that after the freight train had passed Alma in the morning—and I invite your special attention now to the schedule, it is correct—another train comes from Charlotte at 12.50 in the day; that is the testimony of Capt. Welsh, and he tells you that another train comes besides the one Dugald McNair was upon from Charlotte, and that is the fast mail and express train—that it generally runs at 12.50; then, I say, is it not reasonable to suppose that this defendant went from Alma to Wilmington upon the fast mail and express? They talk to you here, gentlemen, about opportunities; did he not have an opportunity to go on that train? Wasn't it free for him to go on! Had not he as much right to go upon it as anybody? Have they brought you here a conductor of that train to prove to you that D. A. McDougald did not get on? If they have, they have done with him like they have done with some other witnesses, they have kept him aside. Oh, no, they would not put that conductor on the stand, not a time, but they have brought you the conductor who came back on the night of the 21st from Wilmington, and they say that you must be satisfied beyond a reasonable doubt in regard to this matter upon the testimony of Capt. G. P. Welsh, who tells you he don't know the name of a soul that was upon his train that night, that he cannot mention the name of one passenger; that he don't recollect to have seen Mr. McDougald, but that he don't know the name of a man. Why, gentleman, do you say that that testimony satisfies you beyond a reasonable doubt? Have they brought you here the registers of the hotels in the city of Wilmington to say that this man did not register there? They have brought you nothing except the testimony of a man who says he can not name one man on the train that night; he don't recollect seeing Mr. McDougald, and he would not swear that he was not on the train. If you would ask him whether you were upon the train that night, he would say, "I don't recollect seeing you." The State would have said then, that is conclusive proof that you were not on. Then, gentlemen, I say that such proof as that cannot get away with you.

To pass on. Let us look about the black. They say McDougald was at Maxton with black on his face. Did you not think, when they told you of this man passing through, right in the heart of a town of a thousand inhabitants, where there is a cotton platform, public, right down between the stores, in the heart of the stores, in the business part of the town, did you not expect that they would come here and satisfy you by an overwhelming number of witnesses, men of good character, old and tried citizens; I ask you, did you not expect that they would bring you here that kind of testimony to satisfy you that this man was blacked, that he had black on his face? Instead of that what do they bring? They bring to you Herring, a man who says he has two homes, that he lives six and a-half days at one place, and about half-a-day he is in Laurinburg; a man who told you that he had joined the Sunday School in Laurinburg, and whom an officer of the Sunday School told you that he never was within the portal of the School but once; and he is the only man who tells you of that morning when they say D. A. McDougald was in Maxton, when he got off at Alma, and was

there seen by many people, and no man save Herring can tell you anything about him. Did the State bring Luther Ivy here to tell you so? Oh, no. They knew he was on the train. They knew Capt. Haddock was on the train, because he was the Conductor that morning. The State did not bring him here. They knew that he talked to John Sellers across the counter in that store, but they did not bring him here. They know he talked to W. W. McGirt, as good a man as there is in your community, and they don't bring him here. Now, who do they bring? Why, Herring. Ah, gentlemen, he is a herring, yes, and a well dried one, too. And what does Herring say? Why, he says that this man was there with black upon his face, so plain that he could not look into his face and fail to see it; that is his testimony. "Look him fully in the face and you are bound to see it." Furthermore, he says that his movements were those of a man sixty or seventy years old, stiff and feeble; that he was worn and tired looking, travel stained and weary in appearance; that he was muddy; that he was not the same man he had seen with a bright, genteel, gentlemanly appearance. I feel sorry for Herring, I do, and I hope he will leave off even those six hours in Laurinburg after this. Why, what is his position here? He stands here alone, unsupported, contradicted by the conductor, who tells you that he went through that train to collect tickets and fares, and that he noticed no man on his train with black on him. Who, I ask you, must inspect the countenances of men more closely than a conductor? He must see, gentlemen of the jury, who it is that got on at every station, and, in order to do that, he must recollect the face of the man who got on at every station that preceded that station upon the line of travel. He would have forgotten it? Oh, no, he would have noticed this blacking quicker than the friend.

Why, Capt. Powers, who proves his character here by scores and scores of witnesses, had the opportunity to have seen whether McDougald was blacked or not. Why, gentlemen, no man had a better opportunity. He squatted down upon the platform there in front of the depot, and this man Powers tells you that if there had been any black on his face he would have seen it. Is that all? They say he had mud on his boots. What does Capt. Powers say? He says it is not true; he says his feet were about upon a level with his face, that he had every opportunity to observe, that there was every reason to expect that his feet, if they were muddy, would have attracted his attention, because such was not his usual appearance. Is not this true? Yes.

Now, there is something further about this black, and I want to call your special attention to it, in this respect. They say he blacked. Why? Because he bought lampblack trom Mr. Graham, some two or three weeks previous to the 21st of April. Now, I ask you this question: Did not Mr. Graham testify here that Mr. McDougald had said to him that Mr. Wicker had asked him to buy that lampblack for him and send it to him? Gentlemen, you saw Mr. Wicker brought up here and sworn by the State during the trial of this case. You saw him placed here upon the stand. Did you hear the State ask him one single time whether he had sent for lampblack? No, you did not. The State has not given him the chance to speak in this court room. Is it not true? Then, gentlemen of the jury, if Mr. Wicker won't deny it; if the State can't get Mr. Wicker to deny it, why was not the blacking bought and sent to Mr. Wicker at Rowland? It is not disproved; it is for the State to say that he got it to use. There is another matter, too. What became of the blacking? I ask you what became of the blacking that they said was found at Campbell's Bridge? This man Daniels got it; this New York Mutual Life Insurance got it; went to old John Conoley and told him to give it to him, and he took it away. Gentlemen, this Insurance Company and the State of North Carolina are in possession of the blacking; where is the witness to prove that it was the same brand of blacking as that which was bought from Dr Graham? Not here. I ask you, gentlemen of the jury, if it is not incumbent upon the State of North Carolina, being in possession of the blacking that they say was used, to bring this blacking and show it to Dr. Graham, and let him testify whether it is the same brand of

lampblack; they don't do that, nor have they the face to do it; they did not dare to take that package of lampblack and show it to Dr. Graham, for if they had, honest man as he is, he would have said, "it is not the mark of lampblack I sell." Ah, gentlemen, Mr. Daniels has figured and figured well on this thing; he went to the drug store of Dr. Graham; he saw what blacking it was that was used; he saw, gentlemen, what kind of black it was that he got from John Conoley; he knew that that feature of the case was driven to the wind if that package of lampblack was brought here into the court room; and what does he do? He deliberately destroys it; he puts it beyond the power of any man to bring here, and says to Dr. Graham that he shall identify that package of lampblack if he can. Is that the fairness of our good old State? No. That is the fairness that we are fed with by this money power from New York; that is where that kind of fairness emanates from; that is where it comes from. Was it not the duty of the State? Yes. Was it not the duty of this murderous corporation to come here and prove to you that the package of lampblack sold by Dr. Graham and the package found at John Conoley's, taken by that detective, was the same kind? I say you have a right to censure the State of North Carolina for not bringing you the testimony identifying, at least, the trade marks on that blacking, or even for not bringing the blacking here and let Dr. Graham say, and not take an honest man's testimony from his lips and wrest it from him. Is it not their duty to come here and explain this testimony by the testimony of Charley Wicker and let Charley speak? If it was their duty, they failed. They knew it would be a good thing if we could just bring Charley Wicker here to prove it, prove that he did not order the black to be sent to him at Rowland; and for that purpose they prepared for him when he came; they said, "oh, no, we won't put Mr. Wicker up; we won't put him up." Ah, gentlemen, I can tell you when you see a lawyer in charge of a witness in possession of testimony refuse to put the testimony up, the burden being upon him in the trial of a cause, you may know one thing, that testimony don't help him; you may know one thing, that the testimony cuts the wrong way, and it is so here. Is it not trying to steal a verdict here from you unfairly?

I tell you, gentlemen of the jury, nothing filled me with greater indignation throughout the trial of this cause than the deliberate refusal on the part of the State of North Carolina to bring here that package of lampblack which it has, which it don't deny having in its possession, and show it to Dr. Graham, and let him at least say whether he sold a package like that or not.

Is that all? Ah, no. They say this defendant is guilty, that you should come into this court and say, "hang him, hang him; order his life to be taken away from him, because of the clothes found at Campbell's Bridge." Are you going to do it? I will never believe it; never. Why? Because, according to the weight of the testimony in this case—and I believe I state it fairly to you—Daniel A. McDougald has never possessed in all his life clothes to correspond with the clothes found at Campbell's Bridge. Tell me the witness, I ask you, who says that the clothes at Campbell's Bridge would fit D. A. McDougald, that the pants would fit him. And when I ask you that question I am prepared here to tell you that Daniel McKinnon, witness for the defense, says he has been clerking for eighteen months; has measured men; is familiar with the length of men, and tells you here that those pants would not fit him, and that they were too small. Is it not the truth.

Is that all? No, it is not all. R. D. Phillips tells you that Daniel A. McDougald has been his partner for six years; that he has known him for thirteen; that they have been intimate with one another; that they see each other a dozen times a day when the defendant is at home; that he never in all his life saw him wear a pair of pants that followed the description of the pants found at Campbell's Bridge. They say that he is guilty because a duster was worn by the man who passed from Shandon out towards Simeon Conoley's home. Do you say he was guilty for the same reason? If so, I ask you, when was the time he wore it? They say he wore it in a disguise in a concert at Laurinburg. Ah, the concert business is shelved, laid away.

What do they bring you? Do they come and bring you witnesses here who would know what kind of a coat was worn in that concert? They bring you a witness, who speaks from a remembrance of his attire, to tell you what was worn, and they have two witnesses here who tell you that their recollection is that the defendant wore a duster. That, gentlemen of the jury, is the testimony on the part of the State. W. DeB. McEachern comes here, and the State of North Carolina says he stands above reproach, and what did he say? He says, "Why, I was there in that concert with D. A. McDougald, I held the coat for him to put upon his back; I helped put the black on his face; I disguised him in the concert; I helped him dress; I helped him throughout his entire attire for the evening, and I swear to you, gentleman, that that coat was not a duster, that it was a cut-away coat, turned wrong side out." Now, gentlemen, I ask you, where is the duster? What does R. D. Phillips tell you, another man whose character is admitted here by the State and the Insurance Company? He tells you that he wore the duster himself that was used in that concert, and that D. A. McDougald did not. That is his testimony. They say, convict this defendant; steep your hands in his blood, because he borrowed a wig and a pair of side-whiskers from J. C. Robbins; because he used them in the concert, and knew that his disguise was effective. Why, gentlemen, it is not the truth; he did not use them; he has never worn a side-beard, and the testimony here warrants me in saying it. What does R. D. Phillips say? He says, "I wore the same beard or disguise in that concert that D. A McDougald wore," and I say to you, it was a beard that covered his whole face, and of an iron-gray color. What do you do with Mr. Phillips' testimony? Will you believe it or reject it? I do not believe you can reject it. Some one else tells you he dressed the man and it was a full beard. They tell you to believe here that the defendant wore a wig that Jim Robbins loaned him, a red, Irish wig, and that the people all along the road took it for a negro wig. I want to ask you if you would ever take this thing (pointing to his own hair, which is red) for a negro wig. I think not; I think, gentlemen, I am safe on that score; I don't think a man will ever tell me that I have hair like a negro. I ask you here, gentlemen of the jury, if it is not incumbent upon the State of North Carolina to show you how that wig came to look like a negro's wig. J. C. Robbins told him that Dr. Everington, a chemist, in town, knew how to dye these things. Dr. Everington has been upon the stand, did he dare to say that he dyed that wig? Not one time. No evidence here that D. A. McDougald ever wore a side-beard; no evidence that he ever wore a red wig. Bob Phillips says there were several wigs in town; that in the concert they both acted the part of a negro, and wore kinky, negro hair, and of Bob Phillips' testimony there is no doubt about.

Now, gentlemen, I ask you which is the most reasonable side of this blacking, that stated here by the defence, or that by the State and this Insurance Company? Now leave that.

They turn and say, "ah, well, if that man on the road, disguised, did not have a duster on; did not have on a frock-tailed coat turned wrong side out; if that duster was not a frock-tailed coat, if D. A. McDougald was never seen to wear that duster; if the pants that he wore in the concert were old blue overalls, still we say convict him;" and why? Because they say he poisoned or tried to poison his uncle in November of 1890. That is the testimony they want to bring you. Is it so? No, not much. When Dr. Currie, a man I like, when he showed here to this Court and to you that he was unable to prove his ability to state what it was that affected that man; when he showed that his medical advantages had been too limited for him to be quite an expert; showed that he had gotten his diploma at Edinburgh, in Robeson, then they said, "oh, well, we do not claim him as an expert." No, no, he is not an expert; get down, doctor, get out of the way; you, doctor, make way there for Dr. Prince; pull him down, put up there a man who was readily admitted by the defence to be a man of skill and ability; he comes in and says that if an emetic relieved that man in an hour and a-half after he had taken the substance that made him sick it would not have been strychnine. That is his testimony; he says that an emetic after half an hour

or an hour's time would not have relieved the man if he had taken strychnine; that a very small quantity was sufficient to kill a man, and that it does its work in fifteen or twenty minutes' time, and that after that powder has been on a man's stomach for an hour's time, an emetic will not relieve it. Why? Because the effect is directly upon the nervous system, because it affects immediately the spinal cord. Then, gentlemen of the jury, if you are to believe anything John Wilkes said—and I don't ask you to believe a word he says—because I tell you, before high Heaven, I do not believe he has told the truth; he has looked Daniels in the eyes too many times to come here and tell the truth, and I expect has his money in his pocket too much; but I say, if you will believe the testimony of Dr. Currie, and of George Currie, a negro boy who went for the doctor, then you must say that it had been an hour and a-half or two hours since Simeon Conoley not only ate the candy, or whatever it was that made him sick, but since he became sick, and that when Dr. Currie tells you positively that the emetic he gave him relieved him. Dr. Prince tells you that if it did relieve him it was not strychnine. Dr. Prince tells you furthermore, "I say it could not have been strychnine if relieved by an emetic; I say further, that it might have been an attack of lockjaw, it might have been an epileptic attack; it might have been, although not probably the case, it might have been a severe attack of indigestion; I know that indigestion will cause similar attacks on the part of children, and it may cause similar attacks on the part of men, although I have never been called upon professionally to attend an attack of that kind." Now, are you satisfied here beyond a reasonable doubt that that man ate strychnine? And they go on and tell you, why of course he ate strychnine; D. A. McDougald intended he should eat it and die. How, after he had eaten this strychnine that was placed on the candy and he found that he had made this mistake? In order to aid this testimony let us see, gentlemen, what you would have done, or any man now would do, who innocently gave any person any article of food that made him sick, and that he presumed or felt, might have contained some poison. I ask you if the first thing you would have done, feeling the innocence of your soul and the anxiety to relieve yourself and set yourself straight, if you would not have gone to your trusted family physician, and complained to him that it was said that the candy you got from Everington's drug store had poison on it; ask him to go and make an examination of the candy for you; and if you would not have gone to him about that candy and carried it to him and showed it to him without hesitation, and have anxiously investigated this matter? That is what an innocent man would do. Did D. A. McDougald do any more? No. Did he stick that note down in the fire and say, "I will not investigate that candy business, no man saw me give it to Sim. Conoley, no man saw Sim. Conoley eat the candy, who can prove it? I am a respectable man and I will not tell on myself." On the contrary his action is honest, fair as it can be, and he goes and he makes it public at once; he asks for an investigation —not Sim. Conoley, Sim. did not ask for it, Dr. Everington did not ask for it. Who asked the investigation of that candy? Why, Daniel A. McDougald asked it, requested it; yes, gentlemen, I reckon paid for the analysis. Then, was his conduct guilty in that matter, or is it the action of an innocent man?

Now, Powell Hill is a boy that I know, and I feel sorry for Powell; Powell just don't recollect this matter right; I will tell you why. If Powell there had been in that drug store on that day and he heard Dr. Prince and Dr. Everington say the candy which is upon my shelf, upon investigation, shows that it has poison in it; if he had been struck with any action on the part of this defendant that was not favorable to his innocence, to his entire innocence in tampering with that candy, what was the first thing he would have said? He would have said, "Doctor, I saw Mr. McDougald around there at the candy box, myself, this morning, he stayed there a mighty long time, and I don't know, but I believe he has done wrong." Did he tell Everington so? No, he did not. Dr. Everington has been upon the stand, he did not tell you that Powell Hill had ever told him about this, and I ask you if it was not his duty to tell Everington right then and there? Did he

tell Dr. Prince when he made the investigation? No, Powell did not say that then. Powell comes here to-day to tell for the first time things that he saw, things that he heard. He was busy sweeping the floor, and talks to you about what he saw and noticed; a careless boy, a boy who confides in the defendant, who has no ground or reason to suspect anything unfair from him, don't you know he was not watching him with any watchful eye?

But is that all? No. Have they showed here where this defendant bought any strychnine? Have they? I believe, gentlemen, it is the law that it shall be recorded upon the books of our drug stores to whom strychnine is sold. Some poisons, I know, are required to be recorded, and my recollection is that this is one of them, that it shall be recorded to whom this poison is sold. Now, they have had their chance to look at Dr. Everington's drug store books and the drug store books all over North Carolina; don't you reckon Daniels has done it? He would investigate every corner; if he would go and terrify these women, who are so old, some of them, that they are tottering upon the grave itself, don't you know he did not fail there? Detectives know these things. Where do we hear of strychnine? Nowhere but upon the shelves of Dr. Everington's drug store, upon the same side that the candy is situated. What else? We hear that the lid to the box is heavy, and that the box is open and ready to receive any particle of strychnine or other matter that might fall down into it. That is the testimony. Now, Dr. Everington does not stand here disinterested—not that I would cast reflection upon the Doctor—not at all; but would the Doctor want it to appear that he would so negligently handle that deadly poison that it might get into candy he offered for sale in that community. Oh, no; he would not do that; the Doctor must defend his reputation as a druggist. I ask you if the State of North Carolina has defended the reputation of Dr. Everington's drug store? Has a man told you that? Not one; on the contrary, you have it from the mouth of Hector McLean, as honest a farmer as ever drew breath; you have it from his mouth, here, that he had gone to Dr. Everington's drug store and bought alum to give to one of his little children, and that in the place of getting alum, he got borax. Now, I ask you, is Dr. Everington, as a druggist, as a careful, accurate druggist, above reproach? No, he is not; he does not stand above reproach.

Now, it is the duty of the State to tell you about that poison, to show you the reputation of that druggist; mind you, there is no burden placed upon the defendant in this cause, nowhere, and so his Honor will tell you. Is that all? Why, there is no more reason for his poisoning than for his killing; I won't go over that, but since we mention motive, I will mention this; we have heard of one motive in this case: they have it positively and from the mouth of a State's witness that Simeon Conoley's life has been threatened, by whom? Not by this defendant, but by Millard F. Moore, wretched man that he is, a man who has looked at the walls of many a prison; by him, by that man, gentlemen of the jury, who stood within a hundred yards of the house of Simeon Conoley and shot from ambush Joe Lomax, because he was upon the land that he and Simeon Conoley both claimed; because he was upon the land that Millard had a fraudulent deed for, and which Simeon Conoley denied the execution of. Where is the disposition to kill? Tell me Millard Moore does not possess it; if you do, you must show me that he did not shoot Joe Lomax; you must show me that his Honor and the court and the jury of Robeson county were wrong when they convicted him for shooting Joe Lomax; if you show me that he is too good to shoot, if you show me here that he would not have done that, what profit was it for him to shoot that poor negro? Did that dispose of the evidence that said that his deed was fraudulent; and because he was on that land he loved and hungered for so greedily, if he would shoot this man for merely putting his foot upon that land, I ask you if he would not willingly seal the lips of the man who said, "Millard Moore, your deed is a lie; I never executed it; it is a fraud, you are trying to steal from me the land that is mine." Would not he willingly see him laid low in cold death?

But they say it was made up between Sim. and Millard about three years ago. Not so; Joe Lomax, according to his testimony, was only shot

about twelve months ago. The threat to Sim. Conoley, that if he or any of his, meaning this sister, this little boy, this aged and infirm old mother, who sat trembling before you to tell her evidence in this case, "if any of you, if you or any of yours are caught by me on that land I will fill you with buckshot." "Is that making a thing up? If it is, it is rather a war-like way of making a thing up; not much hand-shaking.

Then, I say, whom do we find walking hand in hand here to claim the life of Daniel A. McDougald? Millard Moore and the New York Life Insurance Company. A pretty couple, is it not? Millard, the villain, who shot from ambush a poor negro who never had done him wrong, and the New York Mutual Life Insurance Company, who claims the life of one of our fairest Southern boys is not worth $5,000. Have they done more? Oh, yes, Daniels and Millard Moore have scoured Robeson county; it is in evidence. Who supervised the searching of the house of this poor old woman? Millard Moore. Who supervised the searching of the house of old John Conoley there? Millard Moore. Who, gentlemen, first said D. A. McDougald did the killing? Millard Moore. It is uncontradicted testimony. D. A. McBryde says so, other witnesses say so, and Millard has some plan and sense about him, has he not? He knew that Sim. Conoley's life was insured, as all the other neighbors knew it, as everybody knew; it was no secret. Millard says to himself, "ah, Millard, boy, you are into it now; you must have help to get out of this matter; who will help Millard? I know Sim. Conoley's life is insured. I know what I will do; it won't do for me to say that his mother killed him; I could not get any jury in Robeson county—in Richmond, his native home, the place where they all know him and love him—I could not get a jury in Cumberland county, strangers as they are to his family, to say that poor old mother wrung from the boy the life that she had given him. I don't believe I could get them to do that; I know I could not get this sister convicted of this offence. But I will tell you what I will try to do: I have not much better felling for Dan. McDougald than I have for Sim Conoley; everybody knows that I indicted him in 1889 for trespass, because he had cut six turpentine trees on my land, and I made him pay me $5." Honest, because if he had not been he would never have paid him $5 for having cut six boxes in his pine trees. "And I will report to this New York Mutual Life Insurance Company that it is D. A. McDougald, and that if you will come here and help me prosecute him, if you will stick your face in front and not let them see that it is the villainous face of Millard Moore that prosecutes this cause, but that it is this money, this Northern power that stands here to prosecute this boy, then I will go with your detectives, I will search every rat-hole in the county of Robeson, every chest, every secret place there is in this old woman's house and place, and turn out something that will fasten the guilt in public opinion in this matter."

Whom did you see called as a witness? Millard F. Moore, brought there upon the stand and sworn; and on the other day did you notice him how, as we all saw, he had to be carried, reeling in his drunkenness, from this court room during the trial of this cause? Ah, gentlemen, let him seek forgetfulness, such as he may find, in intoxication.

But they say that Dan. McDougald ran away. I will not talk to you long about that. The argument of the counsel who preceded me was so satisfactory, so full, so complete, both as to the law and as to this evidence in particular, that I do not deem it necessary to speak; but I ask you here to take this man who sat upon the pinnacle of respectability; who feared of all things any reflection upon his high standing and character; who had spent his life for thirty odd years in building for himself that reputation which his friends have delighted to testify to you about; a timid, modest, retiring man, a man who never had a cross word with another man in his life; noted for his amiable character and disposition; a charitable, unselfish man, loved and honored by his church as well as by his friends; loved and honored by the young men that surrounded him, for in their Young Men's Christian Association and social amusements he was foremost of them all, the leader, you may say, among all his associates; gentlemen, if you believe anything from the testimony here, loved by every man, both old and young, and who has

been followed here to your county by these friends in trouble, he cannot be guilty; that it is contrary to nature that a man should fall from the heavens of respectability to the hell of damnation and villainy at one fall; that crime, like everything else, comes step by step; that men fall not at one time, in one fall, but that it is gradual. Then, I say here, take a man who stood that way, would he turn without quailing against the charge that tended to lay his character low; that tended to rob him of the friends who loved him; that tended to take from him his position in his church, in all social matters; couple that with the harrowing care for his life; do you believe that the people of Richmond county would form themselves in a body to go to Robeson county to protect him, if they heard nothing that made it necessary? These people of Richmond county, Scotch as most of us are, are peaceable and law-abiding, and would no more invade the peace and quiet of Robeson county than we would have Robeson county invade ours. But we have loved this defendant, and when we heard that cry for his blood, knowing this Insurance Company; knowing the character of Millard F. Moore; having seen him so many times within the prisoner's dock with the numerous felonies and disgraceful charges which he has been called upon in courts of justice to answer, we determined that, should the blood of this defendant be shed, it should not be by a wild mob who had been incited to madness by an Insurance Company or Millard Moore, but it should be shed by the hands of twelve true, honest men, whoever they might be, and by them alone.

And will you, gentlemen, dip your hands in his blood? I tell you, if you do, if you do and do not do it rightfully, you will never cleanse them in this world or in the world to come. His is a life that is as God-given as yours, and none but he who gave that life has a right to take it, save in strict compliance with the law, and I hope, oh, God, I pray to You, that these men here, who sit upon the jury, may never be charged with having dipped their hands in the blood of D. A. McDougald wrongfully by taking the life that they had no right to take.

Now, is he guilty? If he is, gentlemen, I submit that that poor old woman who sat there trembling in her infirmity, who laid during the last portion of her testimony on her bed, who could not hold a steady hand in your presence, says she saw this man, swears to you with the positiveness of conviction that he is not guilty, I submit she has made a fearful mistake; I had as soon believe that a voice from heaven itself would be mistaken or would state to you an untruth as that that old woman would do it, who for years and years has stood and looked as it were into her open grave, and who now, and when she last spoke to you, was stretched upon the bed from which she knew not that she would ever arise. Has she told you the truth or not? And will you let the testimony of D. B. McLauchlin cast a shaow upon the fairness of her last words in this world, for she will say but few more; her course, according to nature, we have a right to expect, is about run. Would she willingly die with a lie upon her lips? I believer her, I believe, gentlemen, that the words that fell from her lips are pearls of truths that you may receive and that you may rely upon. I believe, gentlemen of the jury, that they must take another plot and they must bring another man here than D. B. McLauchlin to upset the testimony of that old woman. Gentlemen. I judge you as I judge myself, and I believe I would be honest in the trial of this cause; I believe I have been; I will not talk to you about any aspersion that has been tried to be cast upon her testimony; I will ask you not to put double mourning upon that old soul; I will ask you to raise that head you see bowed in mourning before you; fill that heart, that is stricken with grief, with joy once more. Harken to the cry of the blood and kin of Sim. Conoley; condemn and repel here in this court this cry of the New York Mutual Insurance Company for the blood of this Southern boy. Give him to his friends and parents; they loved him once, they love him now, they have sheltered him for years, and they only ask you, gentlemen of the jury, his friends, the mother, the sisters of Simeon Conoley, yea, every man who calls himself friend to Simeon Conoley, asks you to give back that life to us that we love; don't take his blood; don't, don't dip your hands in his blood. Give him to us, we have loved him and we will love him forever and ever!

WALTER H. NEAL, ESQ.—FOR THE PROSECUTION.

WALTER H. NEAL, ESQ.,
of Laurinburg, N. C.

May it please your Honor and Gentlemen of the Jury:

So far as my connection with this case is concerned I desire to thank you for the consideration that you have given the evidence introduced, as well also as for the attention you have given the able counsel who preceded me. If I know my own heart, and I think I do, I have but one desire in this case, and that is to arrive at the truth of this issue, and of that ultimate consummation I have not the slightest doubt. I was taught at the feet of my father that the great object of all intellectual research was the discernment of truth, and it is my conception of the duty of a lawyer that it should be done by the fairest and best methods. Now, I desire to say to you that against this defendant, McDougald, I do not cherish in my heart one particle of malice; and if he were permitted to speak to you, he would say that our relations have always been most cordial in their character, and that between us there has never been the slightest estrangement.

It cannot be contradicted that at one time Mr. McDougald had a good reputation in the community in which he resided; it cannot be successfully refuted but that at one time he was a man of financial substance; but I say to you that you cannot say that, because a man at one time occupied a fair position in society and because he has been a successful financier, he shall escape the penalties of the law. There is not in this country, gentlemen of the jury, one law for the rich and another law for the poor; there is not here one law for the aristocrat and one for the man of humble origin, for it is the boast of our institutions and the prestige of our people that all men are equal before the law. I will tell you that I do not want my finger-tips tinged with the blood of an innocent man, nay, more than that, I tell you that I would not assist you in tinging your finger-tips with the blood of an innocent man; but I believe from the bottom of my heart that Daniel A. McDougald murdered his mother's brother. I believe that on the 21st of April, last, when silently the shades of evening had gathered over the old homestead, where his mother had dreamed the short rosy dreams of childhood, that he went there in disguise and violated not only the laws of man and the laws of his country, but he violated that law which God gave to Moses on Sinai's smoky crest, and which was carved on the tables of stone: "Thou shalt not kill." I shall prosecute him fearlessly, vigorously, but fairly.

Gentlemen of the jury, a great deal has been said in this case about my connection with the Insurance Company. I have no apology to make. I appear in this case by the consent of the Solicitor and with the approval of Court. If it is wrong, pray tell me would Judge McIver see it done? If it were wrong, would Frank McNeill, your honorable Solicitor, see it done? No, verily, neither one of them would, and it is an insult to your intelligence and it is one which you ought to resent, when any lawyer comes before you trying to prejudice your minds and warp your judgment and get you to render a verdict which otherwise you would not render. Judge MacRae had something to say about it, but he was more conservative than Mr. Shaw. I guess Judge MacRae has been a corporation lawyer. I take it, Mr. Shaw has had some experience in that line; they ought to bring forth "fruits meet for repentance;" that is what they ought to do. It reminds me of an old homely saying—

"You eat my meat and drink my tea,
And run about town and talk about me."

Ah, gentlemen, they are not satisfied to say that the Insurance Company is prosecuting this cause, but it is a Yankee Insurance Company going to hang a Southern boy. Now, that was a nice argument to make for the defense in this case, was it not? It was a Yankee Insurance Company and a Southern boy!

Gentlemen, there are three propositions which I shall discuss. I shall endeavor not to repeat, because you have already been detained here for a long time; and I ask, I beg, that you will give me that same kind consideration and attention that you would give me if I were seated around your own hospitable firesides. The propositions to which I invite your attention are these: First, that Simeon Conoley was killed by a man in disguise. Second, that the defendant, D. A. McDougald, was that man in disguise. Third, that McDougald had a motive for it What evidence have we to support the proposition that the man who murdered Simeon Conoley was in disguise? The testimony of the first witness which bears upon this proposition was Dr. Graham's. Now, it is uncontroverted that Dr. Graham is a man of unquestioned character. Dr. Graham said he had sold this defendant some lampblack. Is that denied? I opine not. I am going to prove this proposition, not only by the defendant, but also by the admission of Mr. John D. Shaw, Jr., his counsel, and if he has not placed his client in a predicament I don't comprehend the situation. Where is that lampblack? I take the evidence as it falls from Mr. Shaw's lips, the admission of his counsel, that that lampblack that Dr. Graham sold him was found over there at Conoley's after the murder, and when the stenographer's report comes out that glaring admission will face Mr. Shaw that here, in addressing the jury in behalf of his client, he admitted that the lampblack that Dr. B. G. Graham sold D. A. McDougald was found at Conoley's, and Mr. Daniels, the Insurance Agent, took it. That is Mr. Shaw's admission. Mr. Shaw says it is true. What did Dan. McDougald, the defendant in this case, tell Dr. Graham that he wanted with that blacking? He told him he wanted it for Charley Wicker. You will hear later on—they have not argued it yet, but you will hear some of the lawyers say that he wanted it to black himself with in that concert. Now, that is not so. Who says it is true? Dan. McDougald says it is not true. "Dr. Graham, I want some lampblack." What do you want with it, the doctor asks? "I want it for Charlie Wicker; he wants to black himself in a concert over here in Robeson county." Now, whenever you hear any of these gentlemen who are going to follow me say that he wanted that lampblack for the purpose of blacking himself, you will just think, "now, Dan. McDougald says that is not so." Recollect that, gentlemen. Who else says the man was in disguise? Lizzie Conoley says so; Lizzie Conoley and Edwin Conoley also believe that the man who killed Simeon Conoley was in disguise. Now, gentlemen, that is the opinion of the murdered man's sister; she saw the man, Edwin saw him. Has the defendant dissented from that? Not at all. Has he ever said anything to the contrary? Not one single thing. What did the defendant say about it? He met Rev. Mr. Lyon on the train, and this man of God remarks to him, "Danny, I heard that the man was said to be in disguise, now what have you got to say about that?" "I have no doubt about that." Mr. Shaw denies the truth of my proposition. Now, who knows the most about it; Dan., who was there, or Mr. Shaw, his counsel? I want to know whose opinion is the most valuable in this case, Dan's or Mr. Shaw's? He says, Bro. Lyon, Aunt Lizzie Conoley and Edwin say they have no doubt about it." I will tell you the reason why Dan was so frank on that occasion: he was making tracks for the Pacific ocean. It is a long way off; Dan. thought he could make that admission then because he was on an iron horse steaming away to far-off Oregon.

Who else testifies about this particular proposition? The first time this man is seen in disguise was by Jeff. Cobb, at Shandon. Has anybody contradicted Jeff. Cobb? If they have it escaped my observation. He says he was at his house about a mile from Shandon, that he saw a colored man with a duster coming down the road. Fannie Mears next said that that man had on a long duster; had on whiskers and had something at his back, and it created such an impression on her mind that she went home and told her

family about it. Is not that so? Now, if that man was not in disguise why was it that it should make such an impression on Fannie Mears that she should comment on it to her family. The next who sees him is Henry Smith. Oh, yes, they were greatly disturbed about Henry Smith's testimony. Why did not Henry Smith tell this to the coroner's jury, about the white spots he saw on his hands and the white on the back of his neck? I will tell you an unanswerable reason: It was the 7th of May when they had the examination at Mill Prong; Dan. McDougald fled on the 1st of May; Mr. Shaw, the defendant's counsel, was there trying to fasten this crime on somebody else; that is the reason Mr. Shaw was not hunting up evidence that day to convict Dan. McDougald. Jeff. Cobb says, and he is a white man of unquestioned character, that just as soon as that man passed along, Henry Smith came to him and said, "Mr. Cobb, that was a white man blacked up as a negro." Henry Smith was a negro and knew him, and this man passed him in the lane, and he goes right straight and tells Mr. Cobb that that man is a white man disguised as a negro; that he saw the back of his hands and his neck. So Smith is fully corroborated by one of the best white men in Robeson county. Mr. Neill Smith says that it made an impression on him at the time that it was a white man disguised as a negro, and Neill Smith's character, like Cæsar's wife, is above suspicion.

The next one is Mrs. Humphrey: she says that the man just fairly glittered; well, J. C. Conoley and Henry Smith glitter, but they did not have on specks, they did not have on a duster, they did not have on false whiskers and they did not have on a wig, and a pack on their back. They try to prove that it was a peddler. Now, let me tell you, if Dan. McDougald had showed what he was peddling on that day, he would have shown his paraphernalia that he had selected with which to adorn himself for a murder. Did you hear of this man showing his wares anywhere along his line of march? The Major is going to assume that the man was a peddler; he did not try to sell anywhere that you ever heard of. What did J. C. Conoley, col., say about this? J. C. Conoley says that this man came along on this same road; that he was black and had on a duster and whiskers, wore an old slouch hat, and had a pack across his back. Let me tell you something that would convince any sensible man; that would convince any man who knows anything about the habits and language of colored men in this country; that would convince any man in the world that the man who spoke to John Conoley, col., was not a negro. He called him "boss?" You can go out here in this town, you can go all over Cumberland county, you can go down to Edgecombe county and to Craven, and to Warren county, where it is said there are more negroes than in any other county in the State; you can traverse the whole of North Carolina, yes, the entire cotton belt, and never hear one negro call another "boss." It is not disputed, gentlemen of the jury, not at all, but that when this obedient dog, as John called him, was out there playing in the woods with John Conoley, that this man said, "boss, will your dog bite?" That one little thing would prove to any reasonable man that whoever went along that road was a white man in disguise.

This same man next meets Miss Sallie Wilkes within a-quarter of a mile of the murder. That was about dark in the afternoon, about five or six o'clock. That it was Dan. McDougald I shall presently argue to you. He was perfectly familiar with all the paths, and the *minutiae* with which he went into all the details of the route of the murderer shows that he was perfectly familiar with the route that the murderer took; that he, just after passing John Wilkes' house, went out of the field and up to the smoke-house. You have got the evidence of Lizzie Conoley and Edwin, the murdered man's sister and nephew. They say it was a disguised man; they told Dan. McDougald so, and he did not deny it. He told Mr. Lyon that, in his opinion, it was a white man in disguise, yet Mr. Shaw don't think so; Dan. McDougald in the silent recesses of his heart thinks one thing, and Mr. Shaw gets up here and tells you his client is mistaken about it. Now, I want to know who knows more about this, Dan. McDougald or Mr. Shaw? It seems to me that Mr. McDougald ought to know more about it.

Now, let us see, was Dan McDougald that man in disguise? It does

seem to me that that proposition can be proved so effectively that it is almost useless to discuss it. There cannot be any doubt about the fact that on the morning of the 21st of April Dan. McDougald was in Laurinburg. Take the defendant's own witness, D. E. McNair: He states that the train runs to Maxton and on to Alma; so Judge MacRae says, so says Mr. Shaw, both of them say that he went on to Alma. Mind you, there is Laurinburg; the next station of the Central Railroad Company is Maxton, and the next Alma, just two miles below Maxton; now they say that he went on to Alma. Well, now, we dispute it; we first dispute it, and then we say that even were that so it is not inconsistent with the State's position in this matter; not at all. You can not be troubled about reaching a conclusion that he got off the train there at Maxton. Mr. Cottingham swears so, Mr. Luther McCormick says that it is true, and Dugald McNair, who is the conductor, says that the train stopped there long enough that morning to get breakfast, and he went over to the hotel and got his breakfast. Conductor McNair says that he went on to Alma. Suppose he did; it is only two miles from there up to Maxton; and here is Dan McDougald, sitting in the Court room during the progress of the whole trial; there was his brother, residing at Alma at that time, and there was Sellers; never has he been seen at Alma by anybody except Mr. Dugald McNair. Gentlemen, Dougald McNair testified to something else; he told you that at that time, as his train would be approaching Alma the other train would be going on back to Maxton. Now, I will tell you how they try to side-track you on this particular phase of the case. Dugald McNair testified that their train reached Alma about 7 o'clock in the morning, and Judge MacRae and Mr. Shaw try to drive it into your minds that Cole testified that it was about 7 o'clock when he saw McDougald on the tank, and there ain't a God blessed word of truth in it. I don't say they intentionally misrepresented these facts, but Judge MacRae and Mr. Shaw shot wide of the mark. The evidence is that Cole saw McDougald at the water tank at thirty-five minutes past eight. Oh, yes, this model christian gentleman, defended by this able array of counsel, trying to side-track you. Gentlemen, I ask you, in all truth and all good conscience, if that man Cole testified that he saw McDougald at the water tank at 7 o'clock. If there is a man in this jury box that will say that Cole testified he saw him there at 7 o'clock; if his Honor will say that the evidence in this case places Dan McDougald at the water tank at 7 o'clock, I will wash my hands of this case. You are not going to say it. They knew that it was damaging; they knew that Dugald McNair's testimony would not stand a test, that they had to brace it, and the only way to do it was to manufacture testimony themselves. Of course I do not say that out of any disrespect to the gentlemen, not at all, but that is the fact in the case. Don't you think it is exceedingly singular that Dougald McNair's ticket report don't show something about this thing? Here is a man that is a conductor, and he is required to make out ticket reports about the passengers he carries; he makes out a ticket report to the Company that don't show he carried him to Alma. If he was at Alma, if they are so anxious to prove that he was at Alma that morning, pray tell me, gentlemen of the jury, could not they make it a little clearer to you? There he sits, if they are so anxious to prove that he was at Alma that morning, could not they have put John McDougald on the stand, John McDougald, the defendant's brother.

Now, was he at the water tank? You cannot have any doubt about that, not a particle. Mr. Cole says that just about twenty minutes before the freight train passed there, he saw McDougald up at the tank; that he came from towards the crossing of the Carolina Central Railroad. I want to know, gentlemen of the jury, that if Daniel McDougald was not trying to keep himself concealed, for what purpose did he go up in the woods, half a mile from the station, to take the train? You cannot have any doubt but that McDougald was there at the tank. I will tell you somebody's testimony that they handled mighty gingerly in this case, and that is Lizzie McCoy's. She says she knows Daniel McDougald, and knows him well; she lives in the same town that Daniel does and has lived there for many years, and Lizzie saw him at the tank. Gentlemen of the jury, has Lizzie McCoy's tes-

timony been contradicted? Judge MacRae says, "Well, what does Lizzie McCoy say? Well, I don't believe I will say anything more about Lizzie," and he dismissed that part of the inquiry. And if Mr. Shaw dicussed her testimony at all, I did not hear it; it was not Lizzie's testimony they were looking for.

Now, gentlemen, as to K. H. Cole's testimony. K. H. Cole says that a man came up there; that he had a light moustache, and that he believes that McDougald is the man. He says in his best opinion he was the man. Does he stop there? He says he asked the man, "where are you from?" He replied, "My name is McDougald, and I am from Laurinburg." Now, that is what he told him. Here is one witness, gentlemen of the jury, Lizzie McCoy, swearing that she knows Daniel McDougald, and here is another witness that comes on the stand, who says he saw a man there corresponding to the description of McDougald. Have you a doubt in your mind as to whether it is the prisoner?

What does Mr. Lockamy say about this? Mr. Lockamy is a conductor; he says that a man got on his train and that he paid his fare to Shandon; that when he saw the man there, he said to Capt. Lockamy, "How long before the train goes?" Lockamy remarked to him, "The mail train will be along in a few moments, take that." "No, I am not in a hurry," replied the defendant. There is another circumstance. That man, if he was Daniel McDougald, was not anxious to arrive at Shandon early in the day, but he preferred to take a train that was slow in its mode of travel and would possibly be late in reaching Shandon, where he would leave the train and get into his murderous disguise. He told Lockamy, "I am in no hurry." "Stranger, you had better go down and take the mail train; you have got time." "No, I am in no hurry, I will take the freight." Now, gentlemen of the jury, there are not many men who are going to travel on a freight train in this country when they can take a passenger train going to the same place, unless they have time to get rid of for a particular purpose. Where did he tell that Captain he was going? He told the condutor that he was going right to Shandon, and paid his fare to Shandon, where we find this man. And now let us see about Mr. DeVane's testimony. A great deal has been said about why the State did not put on Mr. DeVane. Let me tell you something: if anything should happen by which this cause should ever be tried again, you will never catch McDougald putting him on the stand again. What does he say? He did not state what Mr. Shaw said he stated. I will tell you what was the trouble with Mr. Shaw. It was manifest in his whole speech; he sat down in his office at Laurinburg and wrote his speech; he wrote his speech at home, thinking about what he would like for the testimony to be, and when he came over here the testimony was another thing, but he had learned his speech and he had to say it. It does not make any difference about the evidence. He said, "sitting down in my moments of retirement and reflection, I have prepared this argument based on what I think the testimony ought to be and what I think will probably raise a doubt in your minds;" and coming over here he finds the evidence is another thing, but he is going to deliver himself all the same and bear the consequences.

Gentlemen, if you will pardon me for digressing, I want to call your attention to the fact that "conscience doth make cowards of us all." A very great man said that. I love Judge MacRae, I esteem him for his learning, I love him as my friend, a magnificent lawyer, an able jurist and a polished advocate. But, gentlemen, the Judge could not throw himself into the breach of this case. I say, "conscience doth make cowards of us all." He felt, gentlemen of the jury, that the State had so completely overwhelmed the defendant in this case; he felt, gentlemen, that this defendant had gone there and that he had murdered his mother's brother—God knows, I am sorry that she sits here to-day in the weeds of mourning, and they have been driven to great extremities in this case. This man DeVane did not testify like Mr. Shaw said he did. Mr. Shaw told you, gentlemen of the jury, that DeVane swore that this was not the man; he did not swear any such thing. Mr. DeVane swore, "I cannot say whether it is the man or not," did he not.

When his Honor sums up this case and presents the testimony, I ask your attention to that evidence. He says, "I cannot say." What else? He says it was a man about the same make and build as this defendant; he says he might have been a little taller, but he was about the same make and build. Now, gentlemen, if a man's height has not got something to do with the way he is built, then I don't know how you may describe a man. What other point is there in Mr. DeVane's testimony? What else does Mr. Shaw get out of it? He says his complexion was not as light as the prisoner's is. You will remember the prisoner has been in jail for some time, and it is a well-known fact that a man kept in jail will bleach; you can take any man, I don't care who he is, or how dark his complexion, put him in jail and keep him there for two or three months and it will bleach him. Oh, yes, this is not the man, because his complexion after he has been in jail has bleached; why yes, the man is bleached because he is kept from the rays of the sun, because he does not breathe the same pure air that we have been breathing, that is the reason; you cannot find any consolation in DeVane's testimony, for he comes and says that the man he saw was about the same make and build as the defendant.

They try to mislead you on another point; they would have you believe, gentlemen of the jury, that the State contends that the duster, if he did wear a duster in these concerts, was the same duster he had on; now the State don't contend that; it makes no difference whether it was the same duster or not; it makes no difference whether he had on blacking or not. The question is, what did he have on on this particular occasion? Now, Charlotte Dumas says that a white man passed her house with a duster on, and having a grip sack, just as this man had. W. C. McPhail testified that a white man passed there, having come from the direction of Charlotte Dumas' house. Judge MacRae asked a question, how in the world did that man disguise himself? In the woods that that witness was talking about; it is located between McPhail's place and Jeff. Cobb's place. Who brought out that testimony? The State brought it out. The State asked the question, "is not it cleared land all along there?" They thought they had a clincher there; if they could only have proved that how glad they would have been. But lo and behold the witnesses answered, "there is a skirt of thick woods along there," and, gentlemen, that is the place at which this defendant disguised himself. You can not have any doubt about the fact that the man that Smith and Cobb and Neill Smith and Sallie Wilkes saw, the man that went along that road, and according to the evidence here of Edwin and Lizzie Conoley the man in disguise, it seems to me that I have proved to the satisfaction of this jury that that man was Dan. McDougald, in disguise. But let us pursue this inquiry a little further. Where do we see McDougald next? He is at Maxton next morning, near Maxton, and who sees him there? Edgar Gillespie. If you have heard any evidence contradicting Edgar, you have heard more than I have. I am not going to argue to you that Edgar is a man of good character; I am not going to say that, because I believe—and I am going to deal fairly with you in this case—it has been proven here that Edgar is a man of bad character, but that does not prove that he can't tell the truth. Let us see, gentlemen of the jury, how that is: Edgar Gillespie got on the stand and swore that McDougald came to his house with his face blacked up, and at first he did not recognize him. Have you heard any evidence to the contrary? Not a particle. I ask you, sir, (the prisoner), why did you not prove where you were that night? Could you not have done it? Was it not in your power? If Edgar Gillespie's testimony was not true, why did not the defendant prove its falsity? It was true. I don't ask you to convict this man because he did not go on the stand, not a bit of it. But here a witness comes on the stand and swears where he was that morning, and I want to hear one scintilla of evidence to show that he was not at Gillespie's; there is not a particle. And Edgar Gillespie corroborates his testimony. Edgar says that he saw him there the morning after the murder; four days after that Gillespie was talking to Hector Gilchrist; four days after this thing happened, Edgar Gillespie, this same man of bad character, was talking to Hector

Gilchrist. Where was the defendant? The defendant was somewhere in Laurinburg, enjoying the same good reputation that he had enjoyed previous to the commission of this act, with no suspicion against him, not a shadow of suspicion against him. Have you proved here that any of these rumors had been broadcast over that country? Was Edgar Gillespie endowed with the powers of a prophet to know the charge against this defendant? But yet this colored man, Edgar Gillespie, told Hector Gilchrist about this thing. Mr. McKinnon says that Hector Gilchrist is a man of good character. Edgar told the truth about this transaction, told the truth about it.

What did they get out of John Williams? John Williams was there; John said he, Edgar, was not there that morning; John did not swear that Edgar Gillespie was not home that night. Who else do they put on the stand? Mr. Hester, for the purpose of contradicting Edgar Gillespie, but he did not contradict Gillespie; for instance, on the examination they asked this negro, Gillespie, "Edgar, did you not tell Mr. Hester that you were not certain about this man?" He says, "yes, I told him so;" he admits it. Well, I admit Edgar told Hester that. I will not repeat to you, but you will recollect the reason that Edgar Gillespie gave Mr. Hester. He gave two reasons. Hester comes to him before Lumberton Court and asks him about it. What does he tell him? Yes, I saw McDougald there. Did he tell it anywhere else? What does this colored man McLean say? He says that he came to his house over in Shandon; he asked him about it and he told him the same story that he had told Hector Gilchrist with the exception that he said that his wife was there, and I am inclined to think, from the grandiloquent manner in which this negro talked, that this was an addition of his imagination. Well, McDougald then goes on to Maxton. Where was he all that night? Can you tell, gentlemen of the jury? I cannot, except upon the theory which I have brought to your attention. He is at Maxton Wednesday morning. Who saw him? Mr. Greenwall.

Mr. Greenwall says that he saw his face and it had lampblack on it, and he called him Mr Flaum; Judge MacRae says that Mr. Greenwall was offended because he called him Mr. Flaum. Now, this man has sworn to you that the Judge is mistaken about that. I am not going to say that Judge MacRae wrote his speech beforehand, because the Judge don't do that; but this man Greenwall distinctly swore that he felt complimented at being called Mr. Flaum, but yet the Judge says that this defendant made him mad. Who else saw him? Hear Powers' testimony. What did Powers say? Powers says that he saw the defendant there Wednesday morning about the time the train steamed up, 7 o'clock. What condition was the defendant in then? Take the defendant's own witness. He says that when he first saw him, he was stooping over all crouched up against the side of the house. Gentlemen of the jury, is not that what John Powers testified to? If this defendant had not been up to some devilment of the kind that is charged to him here, if he had not been footing it, what was he so tired for thus early in the morning, "all crouched up and kneeling down by the side of the house?" Why, gentlemen of the jury, in the morning men are fresh. If they have been at what they ought to be, at healthful rest, when morning comes they feel refreshed, as you feel refreshed every morning from the arduous labors of the day. But here, the very first time that this man is seen after that fateful night, according to his own witness, and he cannot say that he is mistaken, he is down by the side of the warehouse; when Mr. Powers first saw him he was there, to use Mr. Powers' own words, "crouched up against the side of the warehouse." Now, gentlemen of the jury, I will tell you what was the matter; the prisoner was tired; he had traveled from the scene of that murder to Maxton about seventeen miles. But, gentlemen, they say to you, why did he not wash at one of those streams instead of washing in there at Edgar Gillespie's house? I will tell you why it was: His conscience was lashing him; he was fleeing from the scene of the murder. Mr. Shaw says the defendant loved Conoley like a brother; yes, he did, Mr. Shaw; he loved him like Cain loved his brother Abel, and he felt like Cain did when he cried, "I am a fugitive upon the face of the earth; every man's hand is against me, and whosoever shall catch me shall slay me." That accounts for his not

washing at some of those nearear streams. If you recollect, gentlemen, it was in evidence here that the moon shone brightly on that night; it had been up some time and set some short time after midnight, and you are not going to catch this prisoner washing in the moonlight; he would wait until the moon has quit riding the lazy pacing clouds. Gentlemen, I am going to travel out of the record just a moment and tell you why he took Gillespie's house. He tried to wash at that public place and somebody ran him away; there is no evidence but that it is the real reason, and at the last day, when the trump shall sound and the secrets of all hearts shall be disclosed, you will find that the principal reason of his being at Gillespie's was that he was frightened away from that mill-pond, and George Blue was the man that ran him away, because George Blue said he got there about half past four, and George said he did not see any man. Of that fact there is no evidence.

Where is this defendant next seen? It is at Laurinburg. Who sees him there? George Currie sees him. Gentlemen of the jury, George Currie goes over the next day at 12 o'clock to carry the sad tidings that Simeon Conoley has been murdered. What condition, now, does George Currie find him in? He finds the prisoner in his stocking-feet and shirt-sleeves. What was he in his stocking-feet in April for, at noon? I will tell you: he had just gotten off his bed; he was tired, and he had been resting. Where is he next seen? He is next seen in McRae's store. Who sees him? Jim Robbins. What does he do? He goes in there and says, "Jim, I want a pair of slippers." Now, gentlemen, Robbins is a man of character, that is not disputed; he had been McDougald's friend from his boyhood, but what does he say? "I want a pair of slippers." Jim gets him the slippers, and then he calls for some other article of wearing apparel; it excites Robbins' suspicion, and he says, "Dan., who is dead? What does Dan. reply? "My tenant." Though he tried to create sympathy in your mind, though he tried to convince you that Dan. McDougald and Simeon Conoley, deceased, were like Damon and Pythias, that they were like David and Jonathan, that they were like Ruth and Naomi, that where one would go the other would follow and die and be buried there, don't it strike you as being exceedingly singular and strange that after the defendant here had received the intelligence that his uncle, this man that Mr. Shaw says he loved so that he would take him to his bosom, that when he heard the sad tidings of his uncle's death, he would say his tenant was killed? Is that the way he would have spoken about it if he had not been involved in the crime? Did he ever tell Jim Robbins that it was his uncle? Jim Robbins says that he stood in that store and bought that suit of burial clothes, the last winding sheet in which poor Simeon was carried to his long home, and never did tell him that it was his uncle. The book-keeper knew him, and had a conversation with him, but he never did tell either of those gentlemen that his uncle had been killed. Now, what does Jim Robbins say to the defendant? Jim turned to him and said: "Dan., what is the matter with your face, it looks red?" Jim Robbins going to lie about this thing? Never. Now, gentlemen, that illustrates to you this fact, that Powers, who swore to you that there was no lampblack on his face, that McGirt, who swore that he did not see any lampblack on his face, and Sellers could have been mistaken; Powers might have been mistaken for the reason that he is a railroad man, and they are accustomed to seeing dirt. And here is Bob Phillips, who swears that he noticed nothing particular about his face; I say that is so, and I have nothing to say against his testimony; the whole thing is this, gentlemen of the jury, that one man may have smut on his face, a dozen men may see the man and not have their attention arrested by it, and one man may come along and notice it. One is positive and the other is negative testimony. There is no man who swears there was nothing on his face, and several testify they saw lampblack on it.

It is in evidence here that previous to the commission of this murder the defendant was considered a christian gentleman. Do you think he was? Gentlemen, can you believe that any christian man would lie? Now, that is a hard word, is it not, to say about the Secretary of the Sunday School; that is

a hard word to say about a "model christian gentleman" that Dugald McNair carried on his train. Dugald says he don't haul all model christian gentlemen, but he hauled this one. The defendant says he had been to Wilmington Tuesday; if he had been there and on a road like the Carolina Central, gentlemen, do you suppose that he could not find some witness who would have stated that he did not tell a falsehood? Ah, gentlemen, you may say what you please about this model christian gentleman; the people have been deceived by him, he don't tell the truth. George Welsh comes on the stand and J. C. Nehemiah and say they came up that night, and he was not on the train. But listen to Dugald McNair: Dugald says he did not go to Wilmington with him; he got off at Alma. We prove by their own witnesses that he told a falsehood about it.. Gentlemen of the jury, would he state a falsehood about where he was that night if he had not been up to some meanness of this character? Now, the next time we see him he was at the house of the deceased that Wednesday night. Ah, gentlemen, Simeon Conoley has been murdered, and when he was killed his neighbors, John Wilkes and Sallie Wilkes, had gone over there, and when Dan. McDougald was sleeping on the table to rest himself after his murderous mission, Sallie Wilkes was sitting up with his victim, and to-day his lawyers are abusing her for those good works; that is a nice way to treat people. Simeon was murdered. The neighbor folk were gathered there sitting up with his corpse, and the next news we know the lawyers are here abusing them. That is mighty poor pay for a neighbor's love; it is mighty poor pay. Sallie Wilkes says that Dan McDougald got there at 12 o'clock that night, and what does he do? He goes in and sits down and says: "Sallie, we will never get any clue to this thing." Was not that funny? McDougald goes out there at night, and when he sits down to discusss this terrible crime, instead of saying, "Aunt Lizzie, we must go out yonder in the morning and measure those tracks, we must search these premises, and do everything in the world for the purpose of bringing the perpetrators of this crime to justice, in the morning before the burial we must engage counsel, we must call in the neigbors," hear what he does say, "this is a mystery; we will never know the truth of it." Is not that singular? Here is this man, whose uncle was murdered, shot down like a dog, shot down by an assassin under cover of the night, this man who loved him like a brother, instead of trying to hunt up the perpetrators of the crime, says, "we will never get any clue to it." The funeral comes off next day. What does he tell John Archie Currie? Mr. Currie said to him, "Let us go out here and take a seat." McDougald replied, "I am tired and want to sit in the buggy," and McDougald gets up in the buggy. Says Mr. Currie, "McDougald, do you know anybody who has got a motive for doing this thing?" "No, I don't, I don't know anybody that has got any motive for this thing." It is in evidence here that all this trouble between Millard Moore and Conoley had been fixed up, and the very next day McDougald says there is no motive for it.

Where is the next scene? It is on the train. Where is he going? Ah, that same conscience of his is driving him again. Going down to Wilmington. He gets on the train and meets Mr. McBride. Have you heard anybody say anything against Jim McBride's character? He is as good a man as Robeson county affords, he is as good a man as any man on that jury, or any lawyer or anybody else. What does Jim McBride say? He got on the train at Lumberton and saw McDougald and said to him, "Mr. McDougald, I want to have a little talk with you, sit down by me; have you got any clue as to who killed your uncle?" "Well, yes, my father has, but he won't give his name." Ah, gentlemen, I am sorry for his father and sorry for his mother, a better and a more honest people are not in our country than Mr. McDougald and his wife, I have nothing in the world to say against them. "Mr. McDougald, I am in sympathy with you in this movement." McBride told him, gentlemen of the jury, that he was his friend; what does McDougald tell him? "It is a mystery which can never be explained." Every time a friend comes to him and offers him a helping hand, he tells him it is a mystery that he cannot fathom. What else does he ask? He asks eim one other question, gentlemen of the jury, that shows guilt. "Mr. Mc-

Bride, can a man be convicted on circumstantial evidence?" He goes right on, McBride gets off the train at Lumberton and McDougald goes on down to Wilmington, and as that train steams in another steams out. Who is on that train as it steams out? Why, J. C. Mercer; he says McDougald jumped off one train as it steamed into Wilmington and got on the other as it steams out. What was he doing? He was running there from his conscience. I tell you, conscience is a terrible thing. What did David say after he had taken Bathsheba to his illicit love and had had her husband slain in battle? What did he say? "If I take the wings of the morning and fly into the uttermost parts of the sea, thou art there; if I ascend into heaven, thou art there; lo, if I go down into hell, behold thou art there." It was his conscience lashing him. What did Mr. McBride tell him? He told him to take those clothes. He goes and gets them. When does he get them? Next Wednesday. Now, Judge MacRae says he showed those clothes to Mac McKinnon, and that is proof certain that he was not connected with the clothes. Nothing wrong with that. Now, Judge, I will tell you why he showed them to Mac: it had not obtained currency that Dan. McDougald was suspected, but just as soon as Dan. McDougald is suspected of having committed this crime, the clothes vanished from human sight. Ah, those clothes are damaging against this defendant. He goes to John Conoley's house and carries the clothes with him. Before he goes there he meets Henry Phillips; Henry Phillips says, "Mr. McDougald, I would like to see those clothes. May be I can give you some evidence." Did he show them to him? No, he did not. When Mr. Hodgins went to him and asked him about those clothes, did he show them to him? No, he did not. He went and saw Duncan A. McBryde, and he said "Look here, McDougald, the man that got on at the water tank is supposed to be the man that got off at Shandon and then went and killed your uncle, and you are supposed to be that man." The clothes have never been seen since, except at Conoley's house.

Let us see what Neill Conoley says. He tells you that the clothes got there that night, he saw them accidentally; that he went to the house where Dan. McDougald and his father were and asked him, "shall I take these clothes in the house?" But his father said no, there would be no danger out there, let them stay. Mr. Shaw thinks that won't do, because he is saying here in the presence of the defendant to let those clothes stay out there; that is the evidence, going to let them stay out there, exposed to the public; so he came back and said that his father wanted them locked up, put in the hay-loft,—something like that. They never did get into the hay-loft, for the next morning the clothes were gone. What does he tell Charlie Purcell—Dan. McDougald—before he left there, knowing those clothes were lost? Told Charlie Purcell that he forgot to take them out of the buggy. Is not that what Charles A. Purcell testified to? Charles A. Purcell testifies that he said that he forgot to take them out of the road-cart. Does he stop there, gentlemen? No, he makes another statement about those clothes; he says they are going to be at the trial. If they are here, I have not seen them, or at any trial; it is in evidence here that the clothes have never come to light. The Deputy Sheriff says that the defendant told him that the clothes would be at the trial and that they were at that time in Mr. Shaw's office. Why was it that you told Purcell that you forgot to take them out? Why was it you went and told D. D. Livingston that the clothes would be at the trial and that they were in your lawyer's office, if you knew they were not there? Why was it? When he got those clothes, where did he carry them? Did he show those clothes to his father; he kept them at his father's home for days and days and his father has never seen them, and his mother never saw them. That was the same package he was peddling with the day he was on his way to Shandon.

He goes on back to Laurinburg, and the next time he boards the train is at the water tank. Oh, gentlemen, there does seem to be a strange affinity between Dan. McDougald and water tanks. If he was a Baptist I would not be a little surprised, but I believe it is in evidence here that he was a Presbyterian. He takes the train at the water tank when he goes over to do his bloody work when he gets through, he takes the train at the

water tank again. And where does he go? He goes from Laurinburg to Rockingham, from Rockingham to Charlotte, from Charlotte to Lynchburg, from Lynchburg to St. Louis, from St. Louis to Kansas City, from Kansas City to Washington, Kansas, and from there to Oregon. For what? He says it was for the purpose of avoiding a lawsuit with Millard Moore. That is the reason he gave. Judge MacRae says that he fled the country till he could return and establish his innocence. Oh, gentlemen, he was gone months; would it take three months to establish where he was that night? Was that what he fled for? Judge MacRae, have you properly represented your client here; this man, who according to Mr. John D. Shaw, Jr., had friends in abundance and money in abundance? who on account of his social position could utterly crush poor Millard Moore—fleeing to keep out of a lawsuit with Millard Moore! He was fleeing because that conscience was still after him. Yes, gentlemen, it was the lashing of his conscience, because he had been trained up in a household where he had been taught what was right and what was wrong; his conscience was lashing him when he fled, it followed him in his flight, and will lash him until the last day, when the secrets of all hearts shall be disclosed. Do you not remember, away back in the first century, when in the Jewish Sanhedrim, upon one occasion, a man rushed in, and falling down at the feet of the priests cast thirty pieces of silver there. Who was it? It was Judas; but the priest reproved him, and his conscience drove him out to a tree in the groves, which were God's first temples, and there he hanged himself. It was a guilty conscience running Dan. McDougald, and not Millard Moore. That was what was the matter.

Gentlemen of the jury, you have heard a great deal, as I have said to you, about this blood thirsty prosecution It has been charged here, it came from Mr. Shaw, that the State was trying to steal a verdict from you. That was an insult to your intelligence. The Hon. Alfred Rowland and Col. McLean appear at the bar for the good people of Robeson county; is it possible, gentlemen of the jury, that the good people of Robeson county are so lost to every feeling of humanity and so thirsty for the blood of any man that they will hire counsel to prosecute an innocent man? If his Honor, who sits upon the Bench, had discovered that the State of North Carolina was trying to convict an innocent man, you would have seen this cause stopped long ago. The gentlemen ought to bring forth "fruits meet for repentance." It was all right to take Millard Moore and incarcerate him in jail; it was all right to take John Kelly and put him in jail; it was all right for this same counsel to be there at Mill Prong and prosecute them, but when it comes to prosecuting a man of position and influence it won't do. That is about the sum and substance of their argument. Why, I ask you to remember, gentlemen, that Judge MacRae's whole argument was not that this defendant was not guilty, but that he would try and raise a doubt in your mind on some point. No, sirs, he did not attempt to prove to you that his client was not guilty; he says, "I will raise a doubt about this." Mr. Shaw pursued exactly the same course. Have either one of them come out and made a fair, square, open defence of not guilty? No, gentlemen of the jury, it has not been heard from the lips of counsel; it was heard only from the defendant when he entered his formal plea and said he was not guilty of this felony and murder as charged in the bill of indictment.

Now, gentlemen, I come to discuss the testimony of Mrs. Effie Conoley. I have a very great respect for old age, and I am not going to say one word against Mrs. Effie Conoley, not a word, but before I get through I shall have something to say about somebody else. Mrs. Effie Conoley is an old, decrepit, infirm woman eighty-five years old. The sands in the hour-glass of her life are about run out, and methinks she can already feel upon her wasting brow the breath of the eternal morning; thirty-three years palsied, twelve upon her bed. Who saw this? Three people: Elizabeth Conoley, Edwin Conoley, and Mrs. Effie Conoley says she saw the man. Why was it, I ask you, that the defendant in this case and his cousel put up Effie Conoley? They stood by the old palsied grandmother's side, and at the very risk of sending her to her last resting place, they had her hauled up

into the court. What was it for? They knew there is one touch of nature "which makes the whole world kin." They knew that down there in the breast of every one of you there was a heart; they knew that you were human; they thought when they brought the poor old grandmother up here, and she told her story about this tragedy, that it would so touch your hearts that out of sympathy you would let her grandson go. That is what they thought, that is what the defendant thought; that is the purpose for which they brought this poor old woman in. Now, what is her testimony? Her testimony is simply this, that she saw the man come there. On examination she says it was a negro; she says that she had seen one man who looked like him, but she was satisfied that that negro was not the man who did it. That corroborates my former position, that it was a colored man who killed Conoley—a man in disguise; she says she saw him walk up, and that it was not Dan. McDougald. I have no doubt but that the old woman believed it, but if Jim Robbins, his life-long companion, could not recognize him when blacked in the concert, how was she going to recognize him in the dark and at night? If all these witnesses in the concert could not recognize him, in the name of high heaven, could his poor old grandmother recognize him? That is the sum and substance of the old lady's testimony. She says she saw him, and of course she swears that it was not Dan. McDougald.

No testimony has been introduced for your consideration so damaging as the uncontradicted admission which the prisoner made to Maj. MacRae on their return from Oregon. He told the Major that it would be a difficult thing to prove where he was the night this terrible crime was perpetrated. He at that time, for once in his life, spoke the words of truth and soberness. No human eye looked upon this defendant, to know him, from the time he disguised himself as a negro parson near Shandon until the next morning at the cabin home of poor Edgar Gillespie near Maxton. There is one eye which saw him. He was seen by the all-seeing eye of that great Being who spake and this world with its mountains, hills, valleys and moving streams sprang into existence. He was seen by the eye of that God in heaven to which he had so often lifted up his unholy hands in prayer. He was seen by Him who is the Judge of the quick and the dead, and who at the last day will remind him of this bloody crime. He may possibly escape the verdict of this jury, but there is another great tribunal before which he must appear. When time shall be no more, when this globe and all other moving and fixed planets shall come to give up their dead, and the billions sleeping in their bosoms shall be called upon at the bar of God's judgment gate to account for the deeds done in the body, you, sir, will see written on a large white scroll, in letters of blood, Daniel McDougald killed poor Simeon Conoley.

This defendant not only fails to account for his whereabouts on the night of the 21st of April last, but he also declines to let you be informed as to where he was all day Tuesday.

Is it not very remarkable indeed that this defendant, whose life previous to this charge had been so exemplary, was totally unable to account for his whereabouts Tuesday and Tuesday night? The conclusion of his guilt is irresistable.

Hear me, do his lawyers argue his innocence? No. They say prove it beyond a reasonable doubt. Did he deny his guilt to the High Sheriff in Oregon? No. Did he deny his guilt to the officers of the State of North Carolina who brought him back to his native State? No. Nay, more than that, when his friends called on him in jail, and the companions of his youth and his former partner in business, Robert D. Phillips, met him there, did he deny his guilt or proclaim his innocence? No. He was as dumb as the tombs.

Much has been said about his previous good character. The truth is he was a whited sepulcher. His own friends convict him of falsehood, and neither his counsel or any one else will deny that proposition. If he was a liar he was not what he represented himself to be; if he was not what he represented himself to be he was a whited sepulcher, and if he was a whited

sepulcher he had no character, and if he had no character he would not for one moment hesitate to take the life of his fellow-man to rob an insurance company of five thousand dollars.

So much, gentlemen of the jury, for the evidentiary matters in this matter between the State of North Carolina and the prisoner D. A. McDougald. My distinguished associate, Mr. N. A. McLean, was exhaustive and elaborate in his opening, and I congratulate him upon the fairness of his presentation of the case for the State. It would not be in good taste for me to discuss the evidence so much in detail as he has done, and it would be a useless consumption of your time.

You are gentlemen of intelligence, and I need not remind you that the evidence in this case is purely circumstantial in its nature. Therefore it is eminently proper and important that I should have something to say on the relative value of direct or indirect or circumstantial evidence. It has been said by the most learned authorities on the question that circumstances are inflexible proofs: that witnesses may be mistaken or corrupted, but things can be neither. Paley says circumstances cannot lie: that a concurrence of well-authenticated circumstances composes a stronger ground of assurance than positive testimony. Lord Chief Baron Macdonald says that when circumstances connect themselves with each other so as to carry conviction to the minds of a jury it is proof of the most satisfactory sort. It is almost impossible for a variety of witnesses, speaking to a variety of circumstances, so to concert a story as to impose upon a jury by a fabrication. But to settle the matter in your minds the State now asks his Honor to charge the jury that if, upon this evidence, although it abounds only in circumstances, yet, if it carries conviction to your minds of the defendant's guilt, you shall return a verdict accordingly.

And now, gentlemen of the jury, my labors in this case are about to close. The time-piece to your left admonishes me that for near two hours I have been favored with your attention. The State's case will be again presented by two gentlemen of marked ability and they will discuss the motive the defendant had for the perpetration of this deed.

The heart of every reflecting man in Richmond county, the home of the defendant's adoption, burns within his breast in the contemplation of this terrible crime. The little Scotch village of Laurinburg shudders to remember that she has harbored a human being capable of committing a crime so horrible and so revolting. It has no parallel in the past, and if you will do your duty the future will not afford another.

In conclusion, gentlemen of the jury, I give you the honest assurance that the performance of this duty has brought me no pleasure, but I intended from the beginning to prosecute the prisoner fearlessly, vigorously and fairly. My "conscience is void of offence." I prosecute him in the name of God, and I speak in all reverence, whose commandment he has set at naught; I prosecute him in the name of North Carolina, whose statute he has violated; I prosecute him in the name of Robeson county, for robbing her of her citizen; I prosecute him in the name of my own home, whose good name he has tarnished; and I believe that you will say by your verdict that the perpetrator of this most horrible murder shall pay the penalty of the law which he has violated.

CAPT. W. S. NORMENT—FOR THE DEFENSE.

CAPT. W. S. NORMENT, of Lumberton.

May it please your Honor and Gentlemen of the Jury:

The counsel who has just addressed you, and who has just taken his seat, closed his argument by stating that he performed his duty with a heavy heart. His reasons for it, gentlemen of the jury, he did not give you; he leaves it to you to guess. I stand here different from the counsel on the other side; I stand here in behalf of this unfortunate prisoner at the bar; I stand here with no heavy heart; I stand here to speak for him. I come to thank you, and as one of his counsel am grateful to you for the patient hearing you have given his cause. It is the most important event of his life, and we ask you, and we know you will give to his cause your best endeavor. Now, without asking anything further, as we have been nearly two weeks trying this cause, I shall come to what I have to say in this case and promise you not to keep you here very long.

Now, in all my practice, in all my connection with criminal causes tried in this State, with an experience as Solicitor for four years in the district, I say to you that I have never known a crime committed like this without a motive. So the first inquiry for you is to see if there is a motive underlying this murder. I do not hesitate to say to you that the man who murdered Simeon Conoley on the 21st of April, 1891, was impelled by a motive as deep, as dark as the devil could suggest or implant in human breast. A motive not such as is implanted in the breast of a christian man, but the motive of a villain, of a man used to and steeped in crime. Gentlemen of the jury, if the defendant at the bar had such a motive, let us in the light of this evidence here—because that is the only place that we can go to find the motive—see what it is. Now, gentlemen of the jury, the State in this case contends that the motive is shown from the fact that a policy of insurance was issued; they say that the motive is shown from this. Let us see how it is. There was a policy issued, not in behalf of the defendant, for I beg you to understand that a policy of insurance was issued by this New York Mutual Life Insurance Company on the life of Simeon Conoley, but in favor of his sister, Margaret E. Conoley. Now, gentlemen, looking at it from this on, looking at the issuing of this policy, can you say that there was a motive? But they say the policy was not only issued, but it was issued at the expense of the defendant at the bar, that he is the man that had it issued by Roper, from South Carolina. What is the evidence? Why, they introduce a postal card here, and they introduce a letter connected with this policy of insurance, they say, and they connect him with it in that way. How, gentlemen, how does that evidence connect him with it in any way in the world, except that he says to these insurance men that Simeon Conoley has made an arrangement with him to pay the premium on the policy? That is everything in the world this policy shows, and I ask you if you can manufacture a motive out of that?

Well, the next thing that they contend shows a motive is that he was the owner of the place, and that he killed him for the purpose of getting not only possession of the place, but in some way this $5,000 policy. Now, there was some evidence—I intend to deal fairly with you in this case if I can—there was some evidence that there was a mortgage on his farm; there was some evidence that that mortgage had been traded to some gentleman here in the town of Fayetteville, and that the defendant at the Bar had taken that mortgage up. Would he kill him for that? Was that the way to get possession of that land? Why could he not have come into the courts any day and foreclosed his mortgage if he wanted to get possession of the land, if he desired possession of the land on which his uncle and

aunt lived. That won't do, gentlemen. What next? Did a motive exist because it was necessary for him to have that $5,000? Is it in evidence here to show you that his financial condition was such that he not only needed but must have that $5,000? Not a word of evidence of that sort, but, upon the contrary, every witness that spoke about this man told you about his financial condition, says that he was worth some $5,000, and that he was a good liver. So we see that no motive has been shown, or could be shown, connecting the defendant with the murder of this man Simeon Conoly; and until the motive is shown, not by inference, not by suggestion, not by the imagination of counsel, but by proof positive and unmistakeable, we shall ask you to say that some other man than the defendant, D. A. McDougald, did that murder that night.

Now, gentlemen of the jury, you have heard a good deal of the murderer and of the time of night in which the murder was said to have been committed. I desire to call your attention to one fact in this case, a matter in which I think I have a right to speak, a matter which is addressed to you, a matter for you above all others in the world, and that is the fact that it is the duty of the State to give to you not only the name but the evidence from the mouths of every witness that knows anything about this; not only that, but it is their duty above all others to put on a witness that was at the scene of the murder. Now, why have not they put this witness on? It has been held up to us time and again that Margaret Conoley and Ed. Conoley were in the court house, and you have not put them on. Why did not they put them on and give you the benefit of this whole testimony? If they intended to deal fairly with you, if they intended this whole thing should come out, then these witnesses who were at the scene of the murder would have been brought before you, and you would have had the whole murder explained. But they did not do it, and there is a reason for it; it did not count for their benefit; they would not swear what they wanted them to swear in this case, that the defendant, D. A. McDougald, was the man there that night, and they were peremptorily turned off. Now, was McDougald the man that murdered Simeon Conoley? That is the question. Was he there that night, and was he the man that deliberately, on that occasion, murdered his uncle, Simeon Conoley? Did he do it? If he was the man, it was the most unnatural and unreasonable thing that I have ever heard of in my life. With the kindest feelings existing between them, going over there, taking care of them in their old age, in supplying them with the daily wants of life, that he, without a motive and without a cause, all at once should steep his hands in the blood of Simeon Conoley, is something I do not understand and never expect to, and I do not believe you understand it; it is unnatural, it is unreasonable.

Well, now, where was he on this morning of the 21st of April? Everybody agrees that he was at Laurinburg, and the evidence is undisputed that he took the train that morning at Laurinburg and traveled down on that road, we say to Alma, stopping for a few minutes at Maxton as the freight train passed down. There is also a freight train on the Cape Fear & Yadkin Valley Road leaving Maxton at 8.35; if he went to Alma—and we say there can be no mistake about that matter—if he went to Alma and got off there at 7 o'clock, as the witnesses tell you he did, and if you believe further, that he got off at that place and went to see his brother, and if you believe the evidence of McNair and the man with him that they saw him with his brother, why then we say that Dan. McDougald was not the man that got on the freight train at Maxton at 8.35, could not be, he was two miles and a-quarter from the place; was there at 7 o'clock with his brother, to remain there, as we contend, until that down train going to Wilmington, that fast train, should come; that he took that and went to Wilmington as has been stated. If this is so the whole theory is gone. But suppose he went to Maxton, suppose he went back to Maxton, and was there that day; we say it is not reasonable, it is not in accordance with the evidence, it is not what the evidence shows as to his whereabouts; but suppose we take it for granted that he did go back to Maxton that day, that he was there, and what evidence is there that he ever boarded that freight train on the Cape Fear & Yadkin Valley Railroad?

Not a witness, not a white man in the town of Maxton, not a respectable witness have you ever heard say that it was D. A. McDougald that boarded that train that day, with the exception of this witness Lizzie McCoy, and she swears that she saw him at the tank that morning before the train left, between eight and nine o'clock; and that is the only evidence identifying the prisoner at the bar as being at the tank that morning Now, I admit that Mr. Cole says there was a man there with a duster; that he had the same bundles and the valise; I admit that Smith at the tank tells you that there was a man there and that he got on the train, but neither Mr. Cole nor the man at the tank tells you that it was D. A. McDougald; they did not know him, and not a soul about that place where this man took the train identifies him with Dan. McDougald. Lizzie McCoy does not say he took the train. But they say that he did get on that train; that it was Capt. Lockamy's train, and that he went on, and that Capt. Lockamy, according to this evidence, says that a man was on there and that he went on to Wakulla with him and that he got out there, and we do not hear any more of him; that his flagman collected the fare and knew more about who was on the train than he did; that this man was sitting there, looking on the floor, and did not have much to say. Who was it, gentlemen of the jury? I ask you in the light of this evidence, who was it? Capt. Lockamy says he does not know. Can you say from this evidence that it was D. A. McDougald?

The next time he is seen, according to the theory of the State, is at Red Springs; they saw him there without a doubt, because they put a witness on the stand who swore to it, and it was the same man that got on at the tank at Maxton; but unfortunately for the State and the prosecution in this case, the witness that proved that fact, Mr. Phillips, after he had left the stand, felt some stinging of conscience, and he asked to be put back that he might correct his statement, and he comes upon the stand the second time and swears to you that he did not say that it was on the morning of the 21st of April he saw the man there, because he did not know; that it might have been after the murder, that he could not tell whether it was on the 21st of April or not; swore it to you positively on the stand, and his conscience got after him, and he took it back. But we don't't care whether he took it back or not, for so far as the defense is concerned it would be willing for him to take that stand and swear to this thing from morning till night, because we have got the proof that he was not there the 21st of April, 1891. We have shown that by every man in this place connected with this railroad who knows the fact that there was no special train out on that day on which Phillips says he was fireman; that there was no special train on that day, but, on the contrary, Phillips was working in the shops here in this town. That is the record. Couple that with the fact that Phillips says himself that he was mistaken; that the prosecution was mistaken when he swore that it was on the 21st of April that he was there. Then, gentlemen of the jury, that theory falls. Where is the man then? Next you hear of him at Shandon. This old colored woman, Charlotte Dumas, tells you that he passed her house. Who passed her house? Do you know? She says she did not. The next we hear of him he is going up the Lumberton road towards McPhail's; and then you see McPhail, the depot agent, brought up to identify the man as McDongald, and he simply tells you that he saw a man passing there with a duster on; only saw his back; that he was a white man, and that is all he knows about it; as to who he was McPhail did not know. Do you?

Then we leave there, and on the road to Conoley's we get to Jeff Cobb's, a good boy, a man of character, a man that anybody would believe, and he says this man passed the road near Shandon, going in the direction of Conoley's; that he passed him as he came up from his work to the road; that he only saw his back, and who he was he did not know. Then you go on a little further and you meet up with Fannie Mears; she describes him; she tells you that he is on the road going towards Conoley's, but who it was, she don't know; then we come to Smith, the man who saw him and said he had white spots on the back of his neck and on his hands, that he was a painted man, with a duster on. Who was it, Fannie? "I

don't know, a curious looking man to me; I don't know who it was." We move on, gentlemen of the jury, and pass Mrs. Sallie Humphrey and Neill Smith and Henry Smith, and they all say it is the same man, a man none of us knew. So, starting at the tank, following that man, whoever he may be, who got on the train that morning, if one did get on; take his description by the other witnesses who saw him, and there is not a living soul on that road who mentions that man as D. A. McDougald, but upon the contrary says it was a stranger they did not know.

Now, gentlemen of the jury, we have got down towards the scene of the murder. It is night time, everything is still, poor Sim. Conoley is at his home around his own fireside, with the family gathered there. Dan. McDougald was in the habit of visiting that home; he was no stranger there, he was a welcome guest, a kinsman and a friend. This old lady had known him from his cradle, had nestled him on her bosom when he was a boy, had followed him through all the scenes of life, was proud of her child, thanked her God—the old christian grandmother—that he bore the character he did; no stranger there. And I tell you that you may deface and you may obliterate a great many things, and the memory of an old christian grandmother, as age creeps on, may be taken from her as to what is passing at the present, but as you go back to childhood and to early life there is one thing that no mother ever forgot, that is the voice of her child. You cannot take that away from her. As long as the sense of hearing lasts, she will know her boy's voice. The man who came there called for help. Sim. Conoley heard him, they all heard him, and Sim Conoley, as a good neighbor would do, goes out in obedience to that call. Did Sim. Conoley know McDougald? Had he ever seen him? Why, gentlemen of the jury, he had been his friend through life. He goes out, meets him at the gate, and the man asks him the way to John Wilkes's. As a good neighbor he goes back and prepares himself and goes on to show him the road. They are together in a night with the moon shining as bright as day, and as the man passes through the yard, close to the door, the good old grandmother takes a look; she saw him, Ed. Conoley saw him, Margaret saw him; they all saw him there. Who was it? Not one at that house that night, from this aged grandmother to the child Edwin, but what says it was not Dan. McDougald. So here it is, here you have the brothers and sisters of the murdered man and his poor old mother, with a heart full of love for him, and they say that Dan. McDougald was not his murderer. If he was inhuman and devil enough to commit that deed, you would see the Conoley family nestled at the back of the Solicitor prosecuting this case. You would see, instead of the sight that you do, this Conoley family standing there and asking for the life of Dan. McDougald. And I say that this fact is patent as any fact connected with this case, that those who are interested, those who have suffered the loss, those whose hearts have been bowed down in grief, stand here and say the prisoner is not guilty; and yet there is an outside influence somewhere, in some shape, helping this prosecution, that is clamoring for his blood, and I thank my God that the prisoner has got a jury to try him outside of the atmosphere of this clamor. Thank God, a jury composed of men who have no interest in this case except to do justice between the State and the prisoner at the Bar. If you will do that Dan. McDougald will have no cause of complaint at your hands.

Now, gentlemen of the jury, I want to call your attention to another fact in this case that has not been commented on, that it does seem to me shows you the nature of this prosecution. You will recollect that they have brought proof here for the purpose of showing you that, prior to this murder—and as a reason for a motive—Dan. McDougald attempted to poison his uncle. Let us look at this thing in the light of the evidence for a few moments. John Wilkes states that about four or five months before the murder took place, in the month of November or December preceding, that Simeon Conoley became very sick on one morning, came to him, said he had eaten this candy, gave him some, and that he ate it, ate two of the red balls of candy that were given him by Simeon Conoley; that they had no effect upon him, there was no sickness on his part that followed the eating of this

candy, and I believe some of the children ate some of it; and that after Sim. Conoley became sick there was some evidence that led Mrs. Wilkes to throw the rest in the fire. Now, I call your attention to this matter for this reason, to show you that after the murder was committed, after this clamor comes for the blood of McDougald, that then they commence hatching up all the incidents of his life. This candy poisoning, as it is spoken of in this case, took place some four or five months before the murder; you have heard it described, and I don't intend to argue it, but simply to call your attention to this fact, that when that matter was investigated in Laurinburg, Dr. Prince and Dr. Everington, the druggist, knew all the facts that the strychnine had been found in the candy box; why, it was made known all over the town of Laurinburg, spread like wild-fire, that strychnine had been found in the candy box, and that McDougald had come there to examine it, to ascertain the facts about it, for he had a note from home that his uncle was poisoned by that candy, and he does not stop until he goes to this drug store to investigate this matter, and it was investigated thoroughly by Dr. Prince, the druggist and Powell Hill. The whole matter was known, made public, and that was three months before this murder. Dr. Prince says that up to the time of this murder, including the time when this candy investigation was made, that Dan. McDougald's character was as good as that of any man in the county of Richmond.

Gentlemen of the jury, we were tied down to the date of the murder, we could establish his character up to the time of this charge; the State could go behind the charge, they could go back about this candy poisoning; they could ask you if you had not heard that this man was accused of poisoning his uncle, and nobody knows better than the counsel in this court room that if they could have made anything out of that case they would have asked those questions. But is that all? Dr. Everington, the druggist, the owner of that candy, comes upon the stand and, in describing what took place there in this investigation, closes his testimony about in the same words as Dr. Prince, that including the candy poisoning time Mr. McDougald stood as high as any man in the county.

Now, gentlemen of the jury, it is unnecessary for me to talk to you about the tracks, about the investigation at the place of the murder; there were hundreds of tracks made all over that field; the men talking about tracks said that there were a number of persons there before he got there, and that they found the tracks of the murderer led across the field, out in the woods and some distance from it, and yet this man Wilkes says the prisoner deliberately tried to spoil out the tracks made there that day; that he was walking, dragging his feet along. The tracks go up behind the garden and all around, with track at the head of poor Simeon Conoley, and they are trying to make something out of this prejudicial to the prisoner. The next step we take is that, before day next morning or about day, he appeared at the house of one Edgar Gillespie, a colored man, and washed, and after he had washed Gillespie saw his face and knew him. Well, so far as that evidence is concerned, it is conceded on all sides that Edgar is not to be believed; that if he was the only witness in the case the counsel who first addressed you stated he would give it up, and that he put no confidence in his testimony, that it was so completely broken down that the jury could not rely upon it. But they say that there was another man there living near that place by the name of Hector Gilchrist, and that Edgar told him about it a day or two afterwards; Edgar, although admitted to be a man of bad character, being corroborated by Hector Gilchrist, they say that this jury ought to believe what he says. Let us see how that was. He says there was nobody there but him; that he was the only person about that place when McDougald came to wash that night; and John Williams is afterwards put upon the stand, and he proves that he was there that night, living in one end of the house and Edgar Gillespie in the other, and if Edgar Gillespie was there he never heard him nor saw him, and there was nothing but a board partition between their rooms. Edgar himself says there was not a soul but him there; that when his wife stayed at home he was off; that when he was there his wife was away. Stephen McLean is next

brought upon the stand, and he says Gillespie told him the man came there, but his wife waked him up. Contradicted twice. Well, now let us see what Hester said a short time after this. A man by the name of Hester, of good character, meets him with one other negro, Edgar Gillespie and one other negro, and in the presence of this other negro Hester asks him the question, "did you say that you knew who it was that came there that night, or did you say that it was Dan. McDougald?" and he says, "no, I didn't; I didn't know who it was." Well, now, that is the evidence of a respectable white man who spoke with him. To be fair, I know that Gillespie says he told this man so because he did not like to talk in a crowd; he had been told not to talk in a crowd about this time. Who told him? I don't know, but there is the fact. There was no crowd there, he and his friend, another negro, together, when he was asked this question, and he says he knows nothing about it.

What is the next thing? He is seen in Maxton on the next day with black on his face: seen by Herring, seen by Jacob Greenwall. That is what they say. Herring says he saw him on the train; had blacking under his eyes and on the side of his neck, and, I think, in the creases of his neck. Greenwall says he saw him in the town of Maxton; there was a little discoloration under the eye; that is the evidence of blacking on the man's face the day after the murder. As to that you have got Mr. Powers, a man of respectability, who saw him. He had some conversation with him, and he says that he stooped down and looked him right in the eyes, and there was no blacking on him. W. W. McGirt swore the same thing; Mr. Sellers swears the same thing; so we have three against these two, who say that there was some discoloration on the face; but the strangest part of this whole evidence is that Mr. Greenwall saw him in the town of Maxton, a public place; a place frequented by the country around there, a place where the people knew McDougald; Greenwall says he saw him there publicly, there in front of the drug store in conversation with some gentlemen. Well, now, out of that whole population of Maxton, with the man sitting there and conversing with gentlemen that knew him all his life, that Jacob Greenwall is the only witness that can be brought here to prove that fact does seem strange to me. And then, as my friend, Judge MacRae, says, when he got to Laurinburg and Mr. Robbins saw him, that his face was so clean he remarked upon it. So, it does not make any difference with this prosecution, clamoring for his blood, whether his face is black or clean, the cry is "crucify him! crucify him!"

I now desire to talk to you for a short time about the clothes that were found at Campbell's Bridge, and I propose to show you in the remarks that I shall make that the counsel for the State have been unfair in their arguments with regard to the clothes: Now, it is undisputed that there were some clothes at Campbell's Bridge on the morning of the 22nd of April; how they got there, who carried them there, we say is covered in mist and doubt. No witness has proved the fact, and the strongest against the prisoner is mere inference, like the most of the testimony that has been introduced against him in this court. The clothes were found on the 22nd; the prisoner, on a trip to Wilmington, got the information that the clothes had been found; he returns home immediately, goes to his home at Laurinburg, and on the next day or a short time afterwards, as soon as he ascertains the fact that the clothes have been found and are at McKinnon's mill, he goes to the mill for the purpose of getting possession of these clothes and using them in a trial then to be had. It has been insinuated here that when he reached that mill he went into the house where the clothes were and took them out and attempted to hide them by throwing them under the house; that is the insinuation against him, but there is no proof of it. I have come to a point now in this case when I want to appeal to twelve men who are disinterested in this matter. I want to appeal to your recollection of the evidence in this cause in regard to this particular matter. How do you remember it? What are the facts? As I remember it, D. A. McDougald came to that mill that day, and the man who had possession of those clothes saw him when he was coming; George Blue was there at the mill and saw Mc-

Dougald coming, and he watched him until he came up to where he was and made the inquiry if he was the man that had the clothes that had been found. I say, the very nature of the question asked shows and shows conclusively that D. A. McDougald never entered the house until he got into the presence of George Blue, and the accusation that he got those clothes to cover up his tracks is nothing more than an insinuation, and does not amount to anything in arriving at your verdict; and I argue to you from this fact, that when he and George Blue went to get those clothes that they were gone, I say it shows beyond the shadow of a doubt, it shows beyond everything that there was some other man there besides D. A. McDougald that day interested in those clothes. Think about it, here are the clothes found at the bridge; George Blue gets them in his possession; McDougald hears about it, returns and goes right down there; how in the name of sense could he tell where George Blue had put the clothes? How could he tell what disposition had been made of the clothes? He did not know in whose possession they were; he was making inquiry to find out, and when they looked for them they were taken away from their place and hid under the house. The clothes upon search are found under the house, not by McDougald, not that he knows anything about it, but found by Blue, the man in whose possession they were; and then and only then is the first time that D. A. McDougald ever put his hand, so far as the evidence shows, upon those clothes. He took them into possession then, being delivered up by George Blue, and what does he do with them? I desire to call your attention to this fact. A little further on, what does he do with them? He takes them with the intention, as all the evidence shows, of carrying them to John Conoley; is there any secrecy about that? Is he attempting to dispose of them along the road? Is it his intention to get them out of the way? In the broad open day time he meets his friend and neighbor, Mac McKinnon, a gentleman of high character. He calls him out to his road-cart, and tells him, "I have got the clothes, come and look at them; they are in my possession." Does that look like secrecy? And then, when he carries them to his uncle John Conoley, they being in sight in the road cart, he gets out and enters the house; the road cart is left there, pulled up under the shed by some of the boys, and he and his uncle John get into another vehicle and go over to Mr. McBride's. On the way they meet up with Mr. H. H. Hodgin.

To show you the unfairness of this case in regard to all the testimony about these clothes brought out here, if you believe that McDougald had those clothes in his possession there, he carried them to John Conoley's that evening, he took them in that road cart with him; Mac McKinnon saw them on the road, and he carried them to his uncle John's, telling McKinnon that he intended to have them at the trial next day. He swears that. Neill Conoley, one of the sons of John, swears that they were in that road cart when he got there; that they were left out there that night; that there was some conversation between his father and Dan. after their going into the house, and he told them to leave them out there, nobody ever stole anything from him.

There is another interested man in this matter. There is another man, and the man that hid those clothes at George Blue's when Dan. McDougald went for them followed his tracks to John Conoley's that night and got them again. I say it is reasonable in the light of this evidence here; you find one man who is interested in disposing of those clothes. We find him at McKinnon's mill; who he is I cannot say, but we find him there; and it is supposed that he had knoweledge of the clothes going into the possession of McDougald. He knew where McDougald was going and he followed his tracks that night, and that is the man that got those clothes. But, after the unfairness of the argument, the evidence is, that when McDougald got to John Conoley's with those clothes, that he left the road cart there, and that his uncle and himself went to D. E. McBryde's. Now, the counsel come in, both of them that have preceded me, on the part of the State and say that Dan. McDougald did not have those clothes. Why? Because he never showed them to D. E. McBride, whom he met that evening; that he never showed them to H. H. Hodgin, whom he met that evening, when all the evi-

dence shows that when he met Hodgin and McBride the clothes were at John Conoley's. So it shows you to what straits the prosecution is put to make out this case. Did D. A. McDougald commit this crime?

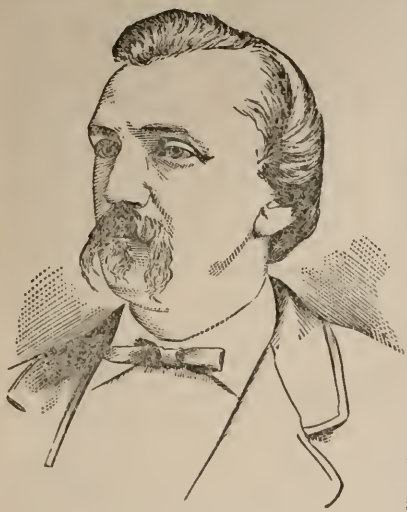
I want to read to you some law that has been read before. I want to read it to you because it is good law; I want to read it to you because it is the law by which you are to be guided in coming to a conclusion in this case and it is this: "Circumstantial evidence is not only a recognized and accepted instrumentality in the ascertainment of truth, but it is one, when properly understood and applied, highly satisfactory in matters of the greatest moment; the fact, the relation, connection and combination, should be natural, reasonable, clear and satisfactory." In other words, starting on the morning of the 21st of April at Maxton and following all around the theory of the State to the scene of the murder and back to Maxton and back to Laurinburg, all those things on the part of the State must be proved clear and convincing to your minds, and must be natural and reasonable. "When such evidence is relied upon to convict, it should be clear, convincing and conclusive, in its connections and combinations, excluding all rational doubt as to the prisoner's guilt, and it is not sufficient to go or be left to the jury unless in some aspect of it they might reasonably render a verdict of guilty." Thus far in this case we have been wandering in fog and mist, and the evidence tends to throw no light on this case, but to puzzle the jury. But I thank God, that beyond all this uncertainty and doubt, there is an anchor of safety for you and for the prisoner; there is above all this mist and darkness a clear, bright and shining light reflected from the evidence of that old christian grandmother, Mrs. Effie Conoley. We are told that the children of Israel, in their wanderings through the wilderness, were led by a pillar of cloud by day and a pillar of fire by night, and as long as they obeyed the movements of this cloud they were under the hand of God himself. So, I say to you here, if you will follow the only certain light in this case, the light reflected from the evidence of this old christian woman, that you will be helped to a conclusion that will not harass you in hours to come.

Now, what is this evidence, and who is Mrs. Conoley? An old lady eighty-five years old, afflicted by the hand of God, not able to move herself. She has been brought here to this court house to testify in behalf of the prisoner at the bar. She is his grandmother, and Simeon Conoley, who was murdered, was her son. She comes here and tells you that she was there on the night of the murder; that she heard the "hello!" at the gate; that she did not see the man when he came in the gate and went to the well, but as he passed on by the house, it being a bright moonlight night, she had a good look at him. She tells you that it was a man taller than Dan. McDougald; she tells you that she saw him plainly; the wind blew some garment that he had on and she saw him up to his waist. She swears to you positively that that man she saw that night, and the man that accompanied Sim. Conoley from that place for the last time, was not the prisoner, D. A. McDougald. Do you believe her? Do you believe that evidence? You have been told not to believe it, you have been told that it is an improbable story; you have been told that is the interest an old grandmother would have in her grandson. Do you believe it? I recall to you some part of her evidence, I think the very last words that she stated before this jury, or ever will state again, she was asked the question if she had not had such and such a conversation with Mr. McNeill, the old lady shook her head and said, "that won't do; stand to the truth." Those are the last words that issued from her mouth, those are the last words that came from her lips, she tells you to stand to the truth; she wants the witnesses in the trial of this cause to tell the truth, not only to tell the truth but to stand to the truth. Lying on her bed, with but a few more days between her and eternity, as it were, her dying declaration, she tells you here that it was not the prisoner that killed Simeon Conoley. Ah, I tell you that one of these christian old mothers, one who has had the hand of God resting heavily upon her; one who is not able to take any part in domestic life; one whose daily vocation is to lie on her bed and look towards God; one whose life was a monument more enduring than marble or brass;—will you disregard such a witness?

Will you do her such an injustice? Will you call after her and tell her she has left behind such a character? I do not believe you will do it. The counsel who first addressed you in this case uttered some words in the closing part of his speech that went to my heart. I never saw this old lady before, I know her only as a christian old mother, but in the name of God let us hold up her character as long as she has got it, and not stab her to death. The counsel that I speak of, in closing his remarks in reference to this testimony, gazing into the face of the prisoner at the bar, directing the looks of the jury to him, asks you not to let that man go upon the evidence of this old woman, and he did worse than that. Standing here in the bar before this jury and before this court he uttered a prayer to heaven, and in the midst of that prayer he gave a stab to her character. He stood here, and, with his eyes raised towards heaven, in speaking of this old woman, he said, "God bless her, but don't turn that man loose upon her testimony!" Ah, I tell you they have got to straits in this case when they attack that old woman's character. And now, gentlemen of the jury, I leave it to you. But a few more days and she will cross over the river and enter that eternity to which all of us are tending. From her life, from what has been said here, we are led to believe that her home will be among the blessed; that there she will spend eternity, and if you do not find out the truth here, if you can not unveil this thing here, if it should be your good fortune, and I pray God it may be, to reach that land and meet that good old woman, you will find that what she said here was the truth. And I ask you, in leaving this case with you, leaving the prisoner's cause in your hands, to be guided by this certain evidence, take care of that which you can grasp, take care of that which is in sight, hold on to the evidence of this good old lady, and you will be led to a conclusion that you will not regret hereafter.

Gentlemen of the jury, this is a case of circumstantial evidence, no eye-witness saw the murder; no eye save the All-seeing Eye witnessed this bloody scene. Be careful; weigh this evidence well; be careful with the verdict. If his Honor on the bench should rule wrong, why we can take it to the Supreme Court and have it corrected, if any officer in this court does wrong, there is a place to have it corrected. If you do wrong, there is no help. And I have thought sometimes that if I were sitting on a jury trying a man for his life, and especially upon circumstantial evidence, and I was to find out afterwards that I had done wrong, that I had given weight to insinuations and suggestions that were not proved, I have thought, in a case of that sort, that a home in perdition with all its horrors would not be worse than the gnawings of conscience upon the vitals of any juror who would give a verdict upon insufficient evidence. Gentlemen, I leave D. A. McDougald in your hands.

COL. W. F. FRENCH—FOR THE DEFENCE.



COL. W. F. FRENCH,
of Lumberton, N. C.

May it please your Honor and Gentlemen of the Jury:

I have been ordered by my commander in this cause to go out and find the enemy, and to open my batteries upon him, whether he be in the front or in the rear. As a good soldier it becomes my duty, so far as in my power lies, to carry out those orders, and in making this advance I intend to inscribe upon my banners the last words which the good old lady uttered—you perhaps did not catch them all—as she was lying upon her bed of sickness. It was, "ah! ah! that won't do; stand to the truth." And I will let you draw your own conclusion; the State was examining, and when those words came, "stand to the truth," they ceased the examination; it did not seem to suit them. Those very words I wish to inscribe upon my shield in this cause.

Gentlemen of the jury, it is a pleasure to me to have the honor to appear before a jury of the grand old county of Cumberland, a county rich in the past in noble men and lovely women, and still possessing abundant harvests of the same; a county especially rich in legal lore, the county of a Dobbin, a Strange, an Eccles and other illustrious men. The polished, persuasive, eloquent Dobbin, at whose touch, as Secretary of the Navy, Japan, whose ports had been closed for centuries, opened them to the navies of the world; a new star in the constellation of nations appeared in the skies, a new empire began to be civilized and christianized, a new nation was born. Strange, the fervid, passionate, eloquent, high-spirited cavalier; Strange, who struck blows with the rapidity of lightning; whose eloquence was like the mountain current, rippling, dancing, dashing from rock to rock, receiving the sunbeams as they pass. In war, never was lion more fierce, in peace never was lamb more mild. He had the honor to represent you in the Senate of the United States in a day when, in my opinion, it was the highest honor that could be bestowed upon man. The county of a Wright, a MacRae and other illustrious men that were living in that time in your county. The venerable looking Wright, who, when you looked upon him, carried you back to days of old, to the days of the Patriarch. MacRae, who leaped in the armor of Achilles' strength, and most nobly did he wear it and closely in his footsteps walk. Shepherd, the pure Shepherd, gentle and mild, a shepherd by name as well as by nature, for no bruised, wounded lamb ever sought his fold in vain. Strange, whose soul for purity and heart for goodness was never excelled, and whose mind was seldom equalled, who spoke in "thoughts that breathe and words that burn," a Chesterfield of fire. A Dobbin, with all the persuasiveness of eloquence.

My friends, on that time there appeared a young man who saw fit not to enter the legal profession, one whose power to sway men's hearts and their feelings is well known in this section, one who could sway men's feelings like the summer breeze, who still lives to teach men true oratory, the Bayard of the rostrum, Harry Myrover of the town of Fayetteville. Where, with the exception of the last, where are all these men? They are gone, gone; they are passed over the river and are now quietly and gently sleeping beneath the soft, downy covering of autumn leaves. Dead, did you say? Oh, no; they are not dead, their example still lives; they live in your memory, they are cherished in the innermost chambers of your heart. As the

old men return from their labors to their hearth-stone at night they tell to the younger men the past history of these men and bid them in their footsteps walk.

Then, gentlemen, you had following in other professions men equally as noted; there were your Lillys and your Steels, and your other illustrious men, your Smiths and your Williamses, names so numerous that, if I should attempt merely to call them, the sun that crimsoned the East this morning would set in the West and rise again refreshed from its slumbers and find me still calling this immortal roll. Your breed of noble men is not yet extinct; you have yet men occupying all these vocations of life who, for eloquence and business capacity, have no superiors and few equals; but their worth is only excelled by their modesty and I will forbear to name them. To this county, gentlemen, to this illustrious county, the prisoner, Daniel McDougald has come. Yes, he has come to the county of his kinswoman, Flora McDonald, he has come here to ask you whether he shall live or die; no one else but you. Shall he live or die? In the hollow of your hand you hold his life; close it and he is crushed; speak the words and he springs forth free. This duty in the providence of God has been put upon you, why, I know not, nor do you know, but it is there, and it cannot be wiped out. This prisoner has come before you to say whether or not he shall live surrounded with his good character, that he has borne from his youth, or whether he shall meet a felon's doom, and I shall try as best I can to assist you in bringing in a correct verdict in this case.

Gentlemen of the jury, never before, I believe candidly, did I feel more completely my own weakness; never before did I have such an urgent desire to possess great powers of eloquence and reasoning, and this is not a selfish desire that I crave, but it is that I may have the power to clearly state to you the great wrongs that the prisoner has suffered on account of this cruel and unjust confinement, and the anguish that is now upon his heart on account of this unjust charge. Ah, gentlemen, if some of the men that I have named here to day could stand where I do stand, they would cause the very heart-strings of your hearts to be broken up in sympathy for that mother and that father and that poor prisoner, whose life-blood the prosecution are seeking; would to God that the mantle had fallen on such shoulders as these! Do not be frightened by this array of books; do not think that the law is cruel to you. It would be cruel indeed were it to put you there and not give you any lights; it is not so, it has not left you in a dark and deserted road, but it has put lights on the road, so that you will not get out of one light before you come into the full glare of another. In other words, what is the law in this case? I have a right to argue to you the law, and it is a right that I almost invariably take; it is a right that I think some counsel in the case ought to take, and it has fallen upon me in this case. I say do not be frightened, I shall read to you but a few words out of each one of these books.

Now, gentlemen, I know that you are tired and weary; I know that you wish to turn your footsteps towards home; I doubt not that a loving wife's heart is beating there looking anxiously for your return; I doubt not that the children are saying, "when will papa be home?" and they are straining their eyes down the road to see if they cannot see his loving form. But papa is on duty, papa, as a son of North Carolina, sits there to-day to say whether another son of hers shall live or die; he is on duty, he must be on the outposts, the enemy are after him; the New York Mutual Life Insurance Company, backed by the State of North Carolina, is crying for his blood; you are on your post of duty, and God knows, I know, you will do it, I am not afraid of you, the prisoner is not afraid of you. With all the money and with all the power, thank God this is yet a court of justice; they have attempted to pollute even the streams of the noble court of justice, but they have failed in this cause. Now, I will first talk as it becomes my duty, and I am very sorry that the gentleman is not here; having absented himself of his own accord, of course he can not complain of us for replying to him in that cause, a cause where the life and destiny of the prisoner are at stake; he has left three able representatives to protect him here. Now, what did Mr. McLean

say? Mr. McLean: "no man dare say that the State has done more than its duty in this case." I say so, and I will give either of you an hour to deny it, you can take it out of my time; it has been said so, and I say so now, that you have done more than your duty in this case. They have deliberately attempted to break the laws of North Carolina, a capital felony, and but for his Honor on the bench it would have been done four times; recollect the positive attempt made by Mr. Neal in his speech, which upon my request his Honor checked,—"I did hope that he would lift the burden laid upon him." Well, then they tell you that we have not proved the prisoner not guilty. Why, have they become so thoroughly warped against the prisoner, that, good lawyers as they are, they have forgotten all the law they ever knew? Is it possible that they have gotten that far? We have not proved the prisoner not guilty! Why, gentlemen, the prisoner need not open his lips under the law of North Carolina; they have got to prove him guilty, that is the burden on them; why, it just shows that the gentleman is so warped that he has not only forgotten the law in this cause but in every other cause.

Now, let us go a little further. I would retire in a moment if there was any doubt about this question; I would not ask you to do what I would not do in your place. Gentlemen, thank God there are witnesses in this case. I don't know what these two lawyers will say, but they have not had a lawyer here that has not tried to be a witness; why he would have been hung in one second if it went upon thoughts; they have got no right to tell you what their thoughts are. They censured my brother because he did not tell you his thoughts as to whether the prisoner was guilty or innocent. He did right, he has got no business to express his thoughts. There is but one thing to give you and that is the law and the evidence in this cause; it does not make any difference what the attorneys for the defendant think, it does not make any difference what the attorneys for the prosecution think. The law: Is he guilty according to the law and the evidence as it appears before you? Was not that your oath? Has it not been recorded in high Heaven? They tell you what they think, they call the prisoner all kinds of names, they search the alphabet to see how they can abuse him—poor man, standing here not able to open his mouth except through his counsel. Let us hear a little more; let us take them up as we go along. "No short-cut;" well, I would like to know what he calls short-cuts; I wish he would give me an explanation of short-cuts, I don't know what dictionary he uses. He expresses great sorrow for the prisoner, "only going to do his duty, felt for him;" he takes fifteen minutes to tell you of his feelings for the prisoner, that he did not have any malice. Bro. Neal talked about fifteen minutes also to tell you that he had no malice in this case; "nothing in the world against the prisoner;" yes, he was sorry for him, going only to do his duty. Yet he turns to him with the exclamation that Conoley is now where the ball of the assassin cannot reach him. That he felt for him, that he was sorry for him, that he was not going to use any harsh names; oh no, not he, his heart was going to be as tender towards him as a lamb, and he calls him an assassin; I have down his various other expressions, but I have not the time to quote them. Gentlemen, give me deeds not words; one kind act is worth a thousand words from a heart that is doing no kindness but is doing the contrary. The prisoner may well exclaim in this cause like John Randolph, "God preserve me from my friends and I will take care of my enemies." But they are his friends; why trouble you with all these expressions?

They tell you that the county of Robeson is hounding this man to death. Who has told you that the county of Robeson is hounding him to death? None of our side; you have that created in the gentleman's own brain. If the county of Robeson has any such charge he is the creator of the charge and the man that makes it. The county of Robeson hounding him unto death! I profess to have as much love for the grand old county of Robeson as my associate has; he was a son of that county by accident and I by choice. Again, we are told that good men have employed these gentlemen to prosecute. I suppose we do not represent any good men of the county of Robeson; well, gentlemen, there are hundreds and thousands of good men. We

asked them at Lumberton who employed them, and they called the names of but two men in the county, and said they were some of those that were aiding them in getting up the fees. We have a right to know who the men are, because the constitution of North Carolina provides that a prisoner shall know who his accusers are, and under that constitution we have a right to know who employed them; if two men constitute all the good men in Robeson county they are casting a greater slur on it than ever I heard cast by anybody. Gentlemen, it is not possible, it would take me too long to go through this whole list of the charges that the gentlemen made. I will tell you one thing, for there is one thing here I must not omit: "The sole object of the defence is to confuse your minds, not to prove him clear." Every cloud that hangs over this case and prevents you from seeing as clear as the noonday, it is the duty of the State of North Carolina to lift, and let the sunbeams come beneath it. But they don't do it, and they talk about us; "you are trying merely to confuse them, you, don't prove him clear." Well now, gentlemen, if I was about to pass over the Alps after the Spring sun had shown upon its mountain tops, and I could get a guide that would be as careful of my safety as the first gentleman that addressed you on the part of the State was careful not to let escape from his lips one word in favor of the poor prisoner (and I shall show it to you), I would feel as safe as a new-born infant reclining upon its mother's breast; not a word for the poor prisoner did he let you hear—not one as I shall show you. Well, now, gentlemen, I told you in the beginning—and I know it is going to be somewhat wearisome, but I ask your close attention to it—I told you in the beginning, that I would give you some law on this case; it is absolutely necessary that you should have some law; it is true that his Honor on the bench will give you the law, but he will just read from a paper, he has not got time, and it is not his duty to explain to you the law as I may do; if I am wrong, his Honor sits there to correct me; if I think he has corrected me improperly, I humbly bow to his decision in this case, and I go up higher where his master and my master sits to explain the law, and so not much harm is done. If I misquote the facts to you, I want you to remember, if I misquote the facts to you, you will judge, you can say, "French misquotes the facts, he misled me," and upon that point I want you to remember that every fact which his Honor will tell you are facts you have got given you here; he just reads them over to refresh your memory; you are placed above his Honor; you hold a higher position than he does, as I say, except upon some immaterial questions. When he decides against us we can bow to him and go to the higher courts; if he is wrong they will quickly overrule him; if he is right they will sustain him, and so there is but little harm done. But, gentlemen, if you make a mistake on facts, it is terrible; there is no appeal, it never will be known till we appear before that highest of all courts. I say that your mistake is fatal. His Honor's mistake is something like an infant in a spasm; it looks like death; the father and mother stand around and say, "oh, Doctor, will he die? Oh, Doctor, he looks like death." He says, "no, he will not die; a little slumber, a little quiet rest, and it will be like the sunbeam enlightening the house." But if you make a mistake, it is death, it is death. Life cannot be brought back except by the power that brought it back to Lazarus; there is no power here to bring it back; if you make a mistake it is fatal and there is no way to help it.

What now, gentlemen? I ask your particular attention to this: What is character? How should we consider character? Vol. I, page 643. There is the law that you shall consider character, and you come then as to what that character is, and there we have a decision in our own State of North Carolina. (Reads from 5 Jones' law, page 65; State *vs.* Henry, on page 69.) Therefore, gentlemen, you have it not only from me, but from this high law, known in North Carolina as the Supreme Court, about this glorious, this pure, this exalted, this excellent character, which the prisoner has proved here; although his mother's heart is bleeding at every pore, she must have felt some pride when witness after witness, even the witnesses for the prosecution, came forward and gave her darling boy such a glorious character. She must have remembered the days of old, far back, when she had, as a mother, done her duty by him.

Now, gentlemen, here is this case: you are told that there is no law in it; they say it is a case of circumstantial evidence. Give me your ears in order that you may hear, give me your minds, in order that you may fully understand that which you may hear; you are trying a human being for his life; in your hands hangs that which, if you take, you can not restore. How about circumstantial evidence? You have not been told how the law is, how you are to hear those facts, how you are to consider them; let us hear what the State of North Carolina tells you about circumstantial evidence, how you are to hear; you do not know, you want to know. I was surprised at one of the attorneys who said that if his Honor thought that the cause was not sufficient, he would take it from you; his Honor has no more power, if there is any evidence in this case, to take it from you, than he has to take my life, yet the attorneys tell you that to influence you. Now, let us see what the law is about circumstantial evidence: (Reads from North Carolina Report, Vol. 75; 385 on page 386.) Each one of these facts that they have attempted to prove: that he was at Maxton, that he got on the train, that he got off at Shandon, must be as sufficiently proved as if the whole case turned upon that particular fact, proved beyond a reasonable doubt; and each circumstance so proved must, taken in connection with the other circumstances, tend to prove the prisoner's guilt Now, let us go a little further, and take another case that puts it in another view. This whole chain of circumstantial evidence is one chain, composed of numerous links, and they say that they have proved each one of those links, that they are firmly riveted, and having done so, riveted together, that that chain carries you with the evidence beyond a reasonable doubt that the prisoner stands guilty. Now, let us see what the law says: (Reads from 80 North Carolina, State *vs.* Bowan, page 432, taken from page 435.) You must be as fully convinced of every link in this chain as you are that Sim. Conoley was killed. I am not talking to you, gentlemen, I am not going to do like those gentlemen did; it does not make any difference what I think about this thing, here is where you get the law from; if I am wrong his Honor will stop me; if I am right you ought to hear it. How would you get the law? From witnesses you get? No, sir, it does not make one bit of difference to me what the other side thinks, nor do we care. Now, let us see a little further in this thing: (Reads from State *vs.* Matthews, 66th North Carolina, page 106, particularly page 115.) It says, an unreasonable theory you can exclude, but the rule is that it must produce a moral certainty. What is a moral certainty? Such a certainty as that you can go before your God at the final day and say, "I rendered a verdict, and I was morally certain of the guilt of the prisoner." On that day, if not before, we must answer for it; it has been decreed by God and a man can not alter it. Let us see if there is any more.

Gentlemen, I will admit to you that some of the cases do lay down that circumstantial evidence is as strong as direct evidence; I do not know but that some of the law writers rather lean towards circumstantial evidence; I never could believe it, never could see why, and this book lays down a rule here that I think is rather stretching the rule in our favor. (Reads from Ram on Facts, page 285.) I did not know he laid it down that way, that is, that if you make a mistake, it could not be corrected this side of heaven. Now, let us see if there is any more on it. (State *vs.* Swink, Devereux and Battle, page 116, your Honor.) Ah, gentlemen, here is a voice that the dust has long covered; he has been taken to his home, but he will neverbe forgotten, never; a bright legal intellect that as Carolinians we are proud of, an intellect whose equal has been sought in Westminster Hall; he sleeps, but thank God his voice still speaks for the prisoner. Ah, yes, and I will say one thing to you, it is the voice of a man who, although great as he was, had been solicitor, and as I shall show you before I end that holding that office long dries up everything almost like sympathy and puts into your heart a desire for blood; and you cannot help it, it is human nature, I will show it to you; this was the lamented Ruffin. All lawyers will agree with me that he never was known to lean towards the prisoner, you cannot say that he was biased towards the prisoner; now, if he was that

warm-hearted, glorious old man that I read law under, Judge Paul, you might say that the heart had gotten the better of the feeling and he leaned towards the prisoner, but it can not be said of Ruffin, glorious and honest as he was. Though it is conceded that he did not often lean towards the prisoner, (gentlemen, this is not addressed to the court, to outsiders, it is addressed to you, gentlemen of the jury, as the opinion of Ruffin), here there was a jury hung, and his Honor took the liberty to discharge them, and Ruffin says that was wrong; the prisoner has been put upon his life and there was no excuse for discharging that jury, the jury ought not to be discharged. It is possible that when you come to consult over this thing you will ultimately come to the same conclusion, but suppose you do not, suppose you are what you call "hung,"—and I had a heap rather hang twenty jurors than my client—what does Ruffin tell you? (Reads above mentioned extract.) I am not talking to you, I am speaking from one that is dead. Now, there is that learned man that tells you—remember it when you go in there, jurors, if any of you have doubts, Ruffin says, it is presumed the other jurors will respect the doubts, because where there are doubts there is a presumption that the prisoner is innocent. I do not think there is any fear of that in this case, but I tell you one thing, gentlemen of the jury, and I mean every word I say, if any one of the jury go into that jurors' room, and have clear, distinct, reasonable doubts as to the guilt of the prisoner, and he surrenders those doubts for his convenience, for his ease; if he surrenders those doubts because he may think it said "I am a stubborn man," he is just as guilty of judicial murder as if he shot the prisoner. No doubt about it; no dodging it. I do not pretend to say I would deceive you; I don't pretend to say if you have those doubts, and the other jurors by argument can show you that those doubts are without foundation and that you are deciding without reason, then you have a right and it is your duty to go to the other side; but unless they do that it is your duty, according to the oath recorded on high, to stand to those doubts forever.

Gentlemen, let us hear a little more. Well, there is a little more in this book of Devereux and Battle. Now, gentlemen, we come to those doubts; I am not going to tell you what those doubts are; I am going to read you what the law says those doubts are—the State vs. Merril, Second Devereux and Battle, page 268 on page 278. This, your Honor, was a case of as clear murder as could possibly be conceived of. The prisoner had been hired by a man that was distilling, and the man that was distilling charged him simply with stealing cider, and he immediately killed the man that charged it. It touches this case, gentlemen; the prisoner's counsel merely asked a witness whether the man was an insane man or not; the prosecution, as in this case, jumped at it and says, "you put the poor prisoner's character at issue, and I have a right to attack it," and he asked a witness if he had not a violent temper. It went to the Supreme Court. Was that language improper? Ah, gentlemen, if that language was improper, how improper they have acted four times in this case, and I will give them fifteen minutes to say it is not so, before I get through. The only thing in this case was that simple question, but what does the Supreme Court say? [Reads the extract.] Gentlemen, remember here upon what the Supreme Court granted a new trial to a man who was clearly guilty. The rules of evidence in favor of life, remember, cannot be too closely adhered to; if the rules of evidence in favor of life cannot be too closely adhered to; if his Honor does wrong, as this Judge does, we can go to the Supreme Court and overrule him, and it is very like an infant temporarily dead. Oh, how much more important is it for you that the rules of evidence or the evidence against the prisoner should most strictly be considered in his favor, because, as I said before, if you make a mistake there is no Supreme Court to go to—the mistake is final, and means the death of the prisoner. Gentlemen, what do I tell you? I am not going to tell you anything that is not in the books. I told you that Judge Ruffin was against the prisoner; he delivers another opinion here of two or three pages, expressly showing that the Supreme Court was wrong; he had been Solicitor a long time, and he had, fully impregnated in his mind, a desire for

blood. Well, now, let us see, gentlemen, how this case stands. We put in evidence the character of the prisoner up to the time of this charge; well, that is right: the law says you cannot go behind the charge; it would be improper, gentlemen; on that we are safe, not as they try to show; "well, if you want to keep it out we don't object." Is that fair, when the life of a prisoner is at stake? Whether he is guilty or innocent, that is the very thing you are going to try. Bro. Neal has made him guilty; Bro Archie McLean has made him guilty, and the fact whether he is guilty or not is the very thing you have got to try. But to my great surprise, my friend—for he is my friend—in this case has forgot, it seems to me, that anything is fair for the prisoner. To my great surprise he asks a witness what has been his character since the charge. His Honor looked surprised from the Bench, leaned over, looked at him and said: "Do you mean that? Is it possible, Mr Solicitor?" He looked a little guilty, and he sat down, and his first lieutenant said, "well, gentlemen, if you don't want it to come out we will withhold it." Was that fair in a case of life and death? Was it fair against the prisoner? You can have half an hour to answer it.

Was that all? Afterwards Mr. Shaw, in examining a witness, asked the question, what is his character up to this charge? They immediately jumped up again: "What is his character since?" Was that all? No, once afterwards. Was that all? No, the fourth time they did it; they asked, "has not the prisoner been charged with other crimes since this crime has been committed?" Don't they know it is not the law? His Honor checked them and said it was not the law. Ah, gentlemen, is it right to do it? The Solicitor stands there; he is the commander of this fleet; these gentlemen are the privateers, and it is his duty to hold them within the law; privateering in all nations leads to piracy if allowed to go too far; and, gentlemen, the very moment they attemped to break the law he should have turned upon them the guns and said, "I will sink you just as quick as I will the enemy if you don't keep within the bounds of the law." Gentlemen, we have got to check the Solicitor up; you and I have got to check him up, and we have got a right to check him up. I am but a private citizen, but I am one of the voters in this district; you are voters in this district, and if you and I can not check him up there is is no power under God to do it; he is covered with all this power and paraphernalia coming from you and I, and we must check him up on this very thing—going to check him up, too. Gentlemen, this is a serious piece of business; he ought to be checked up not only for us but for himself in this case. Why, let me tell you, gentlemen, if he allows his feelings to get the upper hand merely when examining a witness, in the name of heaven, what will he do when he comes to argue this case? Can you put any confidence in what he is going to tell you? If he deliberately breaks the law in the first question, how can you tell what he is going to do? And, gentlemen, if he break the law in that respect against Daniel McDougald, suppose you and I were on trial? We must check him up; he can not help it. Why, he is my friend, and I say he can not help it, but I say it is our absolute duty to check him up in this cause; he is not to blame in that respect, but for that very reason it becomes the duty of you and me and every man to put the check-rein on him, hold him, tell him he must stop. Now, these are the facts, they can not deny it; I dare them to tell you that it was right to ask that question. Why, they won't do it, and yet my brother says no one would dare to say that they had treated this defense in any way except what was right; and after that, if you remember—I sprang to my feet almost without thinking—Bro. Neal stood right here and virtually attacked the prisoner because he was not put upon the stand. That man Gillespie swore that there was nobody there by him and the prisoner, and Bro. Neal said, "why did he not prove where he was?" and Bro. Neal knows that the laws of North Carolina have only recently allowed a prisoner to come upon the stand in his own behalf. Many men think it is a bad law. All the illustrious lord, if they could walk into this court room and see a prisoner in a capital felony standing out here, would say, "surely this is not North Carolina; I have come to a new land; it can not be that in a capital felony the great temptation is held out to a prisoner to do perjury; I

must be in a new land—this can not be North Carolina." No, gentlemen, I say this is a new law; I say it is a law that the prisoner did not see fit to be tried by—he comes here to be tried by that ancient law.

Well, now, gentlemen, this question of doubt. That is one authority: Wharton, Vol. 1st, page 744 and 770. In the providence of God I have been placed here, and, so help me Heaven, his heart's blood shall not be upon my shoulders; I expect and intend to do my duty in this case. After I have done that, then his Honor, but, a great deal more, you have the enormous responsibility. Now, listen here. (Reads above extract, and quotes State *vs.* Matthews, 66 North Carolina, page 106. Second Devereux and Battle, page 63, particularly 65.) Now, gentlemen, I shall lay down something to you that you will very often hear the Solicitor tell you is not so; well, this case says it is so. They very often tell you that you have got nothing to do in the world with your verdict, that it does not make any difference to you how soon the prisoner is hung, that you have got nothing to do with that, that you try an assault and battery like you try a capital felony. Why, it is not so; the Supreme Court of North Carolina says it is not so; I say you want to consider whether the case you are trying be an assault and battery or a capital felony in order to adopt this rule. He says it requires less strong and clear proof for you to convict in a misdemeanor than a capital felony, because it is less probable that a man would commit such a deed as this; that is, it is less probable that he would commit a capital felony, and the evidence upon which you would convict a man of a misdemeanor might be strong enough for that, but not strong enough to convict him of a capital felony. (Reads extracts relating to circumstantial evidence from State *vs.* Ephraim, second Devereux and Battle, page 162, principally 171; State *vs.* Bowman, 80th North Carolina, page 432, 435.)

Now, gentlemen, you have heard a great deal upon this question of flight; I want to tell you what the law says about that. (Reads from Wharton, page 732.)

Now, gentlemen, we have got to stick by the evidence in this case, and we will try to apply it to this law we have laid down. In the first place, I refer you to the character of the prisoner. The following witnesses have sworn in the following words as to his character. Robbins: "Good, don't know a better man." McMillan: "Exceptionally good." Nehemiah: "Good." Everington, "good." Livingston, "good." McNair, "good." Dr. Prince, "excellent." Rich, "without blemish." McKinnon, "good as any man in the county." Roper, "without blemish." McRae, "good." Powers, "character all right." McLaurin, "good." Hargrove, "none better." That is the character that you have to try; that is the character that the State of North Carolina says, in one jump, jumped from a character that would carry him to heaven to a character that must carry him to hell; in one leap he came from heaven to the infernal regions; there is no intermediate place according to them, and that is the character that you have got to try; that is the character that I say should weigh in this case. And in the name of Heaven, in our trial and tribulation, if a good character that has been instilled into us by a christian mother is not to avail us, what will avail? What under the sun will avail us, if a good character is not like a rampart around us, warding off the attacks of the State? Now, gentlemen, I tell you the prosecution is dropping out of this cause. My first friend that addressed you got so ashamed of this man Gillespie—seeing that he was covered with infamy and disgrace, and that he was covered with perjury—the first counsel disregarded him, and said he would not notice him. Ah, gentlemen, when you find in a cause one witness covered with perjury; when you find that absolutely they have come to the courts of justice and polluted the streams that flow from it, and which should be as pure and untarnished as a woman's virtue; when you find that, you may well scan some other witnesses: you may well ask yourself: If he is perjured, how far have the rest been influenced? The first counsel dropped him, but friend Neal took him up, he could not stand it. And, gentlemen, they have dropped another thing. Where is that plot? They have dropped that plot, for I tell you,

when we have anything like consciences, when we have anything in our hearts that we are absolutely ashamed of, we drop it. I do not think that the gentlemen knew when they put in this plot that it was wrong; I cannot believe that in a capital felony they would introduce a plot that was not correct, that was absolutely false. I do not believe the gentlemen knew it, but they ought to have been more careful to introduce a plot here which would reproduce the exact place of murder, and not try to prove to you that the old lady had committed perjury by a false and perjured plot. They ought to have examined it more closely; their own witness, McLauchlin, before he got off of the stand swore that it was not right; and yet they ask you to take the prisoner's life, and it was proven by their own witness that the plot was not true. They have withdrawn it, and I am glad of it. Well, now, that is two witnesses in this case; ought not you to scan the rest, ought not you to look well and see? I know the gentlemen would not do such a thing as that intentionally, but I say they ought promptly to get up as soon as they find it wrong and say, "your Honor, I withdraw that plot; it is not right, it is not proper; it is evidence that ought not to be used against the prisoner, it is false evidence and I withdraw it, and beg the jury not to notice it."

Ah, gentlemen, friend Neal held on to the darkey. They dropped off the coat; they don't care whether the prisoner ever wore a duster or not. Why, the whole theory when they started out was that the party seen on the road was the very party that wore the duster at the concert, that he put on the same costume that he had on at the concert, and that was the reason that he was guilty. I will tell you what my friend Mr. Neal did say now, to show you how far they have got. Well, he said this: he said that he had a perfect right to argue to you that the prisoner was guilty of murder because he said he lost a wig and he represented an old man at the concert; he had a right to ask you to take the prisoner's blood because he had lost a wig and he represented an old man at the concert. Yet, gentlemen, they say now they don't care anything about the concert; the concert has got nothing to do with this case. Why, gentlemen, they proved by three or four witnesses —and they are good men, and I am glad they are good men: it just shows you the uncertainty of human evidence—they prove by four or five witnesses now that the prisoner wore that duster at that concert. I believed it; they fooled me. I said: "well, you can't get out of that; Dan. McDougald had on that duster at the concert; they are piling it up here." Well, finally a witness comes on the stand, a witness whose character is proved, and he says there ain't a word of it so, that the prisoner never had on that duster; he blacked his face and put on him an old cutaway coat, turned wrong side out, and Phillips says there ain't a word of it so about his wearing the duster. Then they dropped it; I reckon they did, and they will drop all the rest before they get through with this case. Had nothing to do with the murder; no, and Phillips says "I wore it;" and yet they have been arguing to you the duster had nothing to do with the case. Mr. McLean or some one argued to you that the prisoner McDougald was so well disguised at the concert with that duster over him that nobody knew him. I don't suppose they did, because he was not wearing it, and Phillips was wearing it; they argue that, therefore, he could disguise himself and that ought to hang him; and now they say the concert has nothing to do with the case. Gentlemen, is not that three links they have given up themselves in the chain? I say is not that three links that they themselves have given up in this chain of evidence?

Well, now, gentlemen, I ask your indulgence while I talk to you. The next they say is, that he left Laurinburg and came down to Maxton; they tell you that there is no doubt in the world but that he got off at Maxton. What do you do with McNair's testimony—as honest, good, upright Robeson boy, as you can find? What are you going to do with his testimony? He says he carried him to Alma that very morning—did not have him on his pass book. He explains that to you; says he was a good fellow, and he did not charge him anything; went on with him, and he carried him to Alma, and one of the train hands says he got to Alma. Well, now, Cottingham

describes him that day; Cottingham says he had a duster and three packages wrapped with newspaper and a satchel; he says he got on at Laurinburg and got off at Maxton. I am not going to misquote; I am going to give you the whole of it—"got off at Maxton." He describes him; Cole saw him at the water-tank; told about the same thing, that "he was from Laurinburg," "named McDougald," "impression is, it was McDougald," "don't recognize him now." Ah, but gentlemen, he don't recognize him now; there was not a witness put upon the stand, that they did not ask "did he have a beard turned out then?" No, he had not turned out his beard. They asked every earthly witness that came upon the stand whether or not he had turned out his beard. Now, gentlemen, I advise all, if this is going to be the way to hang a man, if you are going to be hung because you happened to wear a moustache once and have turned out a beard now, in the name of Heaven don't wear it; and I expect nothing else than a convention of all the barbers in North Carolina, and for them to pass resolutions of thanks and put it in a box of gold on a silver waiter and carry it to the gentlemen. No, sir; if they convict this man simply because he turned out his beard every man in North Carolina will be certain to keep clean-shaved after this. Well, Luther McCormick saw him; don't know who the man was. Phillips saw him at the water-tank on the 21st, duster and valise, going to Red Springs; they have got to prove that Phillips saw that man go along, saw that man there on the 21st. Phillips says he saw him there on the 21st at the water-tank. He goes on the stand afterwards and says he did not swear it was the 21st; he don't know what day it was. It was proven by the telegraph operators, it was proven by the gentlemen at the yard, it was proven by the master mechanic, that no special went out on the 21st. Well, now, there is no doubt in the world, then, that Phillips did not see him on the 21st. Then put that in your minds now; if Phillips did not see him on the 21st, then all these men were mistaken, and he was not at Maxton at the water-tank on the 21st. There is but one way in the world that they can get over that, and that is to take their witness Phillips and say he committed perjury; well, I think they have had enough perjured ones, and they will not undertake another. It will be hard on their witnesses, because he was the master mechanic, or somebody swore that poor Phillips had a good character. Now, gentlemen, I don't want you to forget that; I say that if Phillips saw him there at the water-tank there can be but one of two things: Phillips had either to commit deliberate perjury and never saw him at all, or the man was not there.

We have shattered into a thousand atoms three of the links in the chain of evidence, and yet they say there is no doubt about the guilt of the prisoner. Ah, my friends, did the gentleman that first addressed you tell you anything about Phillips when he said it was proven beyond a doubt that the prisoner was at the water tank? Did he say one word about Phillips? Ah, no. Now, gentlemen, I ask your particular attention here: is that so? Did he tell you one word? Smith saw him; Lockamy saw a man at the water-tank, said he paid his way to Shandon, don't know the defendant, got on at the water tank. What does DeVane say? Gentlemen, remember: Did the gentleman for the State—who was so anxious to implant in your breast the feeling that the prisoner was guilty—did not he keep Phillips from you, and if he was so forgetful as that, you can not pay any attention—so take either horn of the dilemma. Did he tell you about DeVane that they had here as a witness? He did not suit them and they discharged him, and we had to send for him. Did they tell you one word about DeVane? What did DeVane swear? DeVane says: "went on the freight train on the 21st; spoke with a man; I would never take him to be the same man; my impression is that it is not the same man; he was about six feet one inch tall, had on dark clothes, did not see any duster; I remember that he was about my height. I saw no special train on that day." Does not that raise doubts in your mind? Ah, gentlemen, was it fair in the State of North Carolina, when the day came to try this case, to keep both of those witnesses from you? Was it fair? They never said one word concerning either one of those witnesses. There is DeVane swearing that he does not believe this

man is the one; that that man was six feet one inch. Is that man six feet one inch? Unless Phillips commits a deliberate perjury he is not the man; and unless DeVane is totally mistaken he is not the man.

Yet my friend told you that if he had one doubt in his mind, he would quit the case. Well, if that is his condition, if an angel should come from heaven with the winds of the evening and would not whisper one word against him he would believe him guilty of murder; that don't raise any doubts; he has no doubt that the prisoner was the man that got on the train that day; if he had any doubts his soft and tender heart would so move him that he would quit his cause. Gentlemen, I expected when he was talking of the old lady, when he prayed almost, I expected to see his eyes fill with tears and his face work with emotion, but I did not see it. I heard him afterwards, like Mark Anthony over the dead body of Cæsar, stab her to the heart. He was sorry for her. Ought they to have kept that evidence from you? Was it fair to keep it from you? Gentlemen, in the first place, it was bad policy; if a man from any other cause on earth forgets his duty, if it is nothing in the world only to do justice it is wrong to try to mislead a jury. You are good men, you are men with good common sense; and, as Abraham Lincoln once said, you may deceive the whole people a short time but not all the time; you may possibly pick out one man and make such an argument as may deceive one and mislead the whole jury for a little while, but when they retire to the secret consultation of the jury room they will begin to think. B will say: "did not the witness prove this?" and C will say: "look here; did not the witness prove this and this?" "Ah, but that attorney did not tell us that. Take away his evidence, his argument—he is not at all fair to us in this case."

Then, gentlemen, we will go to another point. You cannot help my charging that the first link in that chain is broken. Then you have McNair that carried him to Alma; you have Phillips against him; you have DeVane, the State's witness that they did not want, and discharged and sent home. Gentlemen, you don't know what to do. It is presumed they knew what that witness was going to prove; if they knew that in a case of life and death the witness was going to swear that on the 21st he did not believe it was this prisoner, in the name of Heaven, was it right to send him home? Then what comes next? Then they go on and they say that they have traced this man to Shandon. One Charlotte Dumas says she saw a man: "had on a light duster, that she just saw him going down the road, that is all she saw, something was strapped across his back; they have many stangers at Shandon." McPhail, a good man says, "I did not even see his face, only his back; from his back I supposed him to be a white man." He says he had on a dove-colored duster. Well, gentlemen, that is a remarkable duster —but they say they don't care anything about the duster now. It is worse than the Arabian Knights; it changes from a light to a dove-colored duster in walking a hundred yards down the railroad. I will pass on. Then they see a man down the road —presto, change! he has upon him a duster, and he is dressed up, as they say, like a negro. Who sees him there? Cobb sees him there. You remember his description: he only saw his back as he was going on down the road. Fannie Mears saw him there; Mrs. Humphrey saw him there, and she swears there was nothing particular about his appearance; afterwards, poor woman, she got him the blackest looking man she ever saw, and that he glistened, that he looked like a white man blacked; and yet upon examination before the Magistrate she swore expressly that he was a black man. Conoley saw him about one or two hours by sun, about a mile from Conoley's; duster, package on shoulder, black, glistened; asked where the road was to Fayetteville, whiskers all over his face. Sallie Wilkes saw him. Gentlemen, I want you to pay particular attention to Sallie Wilkes' seeing him. Sallie Wilkes saw him within a quarter of a mile of the house; and, gentlemen, if Sallie Wilkes, as a witness, is to be believed, it was not Daniel McDougald; nobody has called your attention to the fact that Sallie Wilkes swore he was as tall as Sim. Conoley. She swore he had on dark pants; they say the pants were pepper-and-salt. She swore he was as tall as Sim. Conoley, and it is in evidence before you that he was

an inch or two lower than Sim. Conoley; that is expressly what she swore to you. And there is another thing, gentlemen, that I had just as well call your attention to—if I am wrong correct me—and that is that with all the recollection that I have of the evidence at Mill Prong, nobody swore that he looked like a white man blacked. At Mill Prong everybody swore he was a negro; at Mill Prong the verdict was that the man was killed by a negro calling himself Lum Johnson. Therefore all this idea that he looked like a white man blacked has been brought to the witnesses by the talk outside; it shows you that Mr. Lyon was mistaken when he told you that McDougald said that the parties at the house said that he looked like a white man blacked. It was after he saw Mr. Lyon that it was heard that it was a white man blacked. Take all the evidence, take every one of these witnesses, and they swear it was a negro. Millard Moore was a witness that they had there, gentlemen; why did not they put Millard Moore on the stand? I say on that trial not a soul supposed he was a white man blacked; therefore I say Lyon must be mistaken. He has heard so much of it, and he has concluded that the prisoner told him a thing that never was heard of at that time.

This has been a remarkable case. Ah me! I used to think it was hard to remember facts, but if everything is true that has been sworn in this case, God has given us remarkable memories; yes, He has given us remarkable memories—that a man should remember the very words that a man said to him on the 1st day of May, 1891, and, furthermore, that Conductor Welsh should remember positively that on the 21st day of April this man did not come up with him on the train. Now, gentlemen, if there had been anything to impress it upon Welsh's mind, you may have thought about it that those gentlemen would never have let it pass by—they would have asked Welsh: "What impressed it upon your mind? It has been a long time since the 21st of April; what circumstance brought it to your mind immediately afterwards?" But never a syllable came from them; therefore we are to believe that there was nothing to impress it upon Welsh's mind; that Welsh can tell you that the prisoner did not come up on the 21st; and when asked by Bro. Shaw if he could name a single passenger that did come up on the 21st: "I do not know who was on the train on the 21st; I cannot give the name of a single human being that came up on my train on the 21st day of April," and still he swears the prisoner did not.

Then, gentlemen, we come to the washing. I do not know what to say about that. Bro. McLean said it was perjured evidence, and he would not argue it, but Bro. Neal stood to it and said he would take it. It could not hurt Neal—Neal stood it. I tell you, when fellows get to fooling with companies they make them swallow anything. And, gentlemen, he gave one of the most wonderful circumstances that ever I heard of in my life. It was in evidence that it was about 18 or 19 miles from where the murder was committed to this negro's house; it is proven to you that he must pass numerous swamps, it is proven to you that the clothes were left at Lumber River, a beautiful stream to wash in, the brightest water you ever saw, and he passed that lovely water, and he passed through the swamps, and did not wash. Why was it? Bro. Neal told you that the moon was shining, and he was afraid somebody would see him there going into the swamp, or that somebody would see him at the mill, and he came to a house—the witness said it was a while after day when he saw the man—he came to this house on one of the most public roads in the county of Robeson, did not go inside the house, but the negro brought water on the outside of the house; he stood there on the outside of the house and washed himself in public view of the road. That is Bro. Neal's theory; well, if all his theories are as weak as that we had just as well stop. Is not that true? Check me; if I go wrong check me. When you get into that theory, say to yourself: "Has French dealt honestly with me?" In the name of Heaven, it is not I speaking; I am a poor individual, I am nothing in this cause, but I represent the prisoner, the defendant, D. A. McDougald, and through him am an humble instrument put in his hands by the law of God; I am talking to you for D. A. McDougald.

But, gentlemen, let us go on in this cause. I doubt not but that you think: "That fellow French says he is tired, but, Heavens, how he is holding out!" For two weeks I have had the strain, and you know not what the mental strain is; knowing for one or two days that sometime you have got to speak, and you don't know how it is to keep up the temperament and the nerve to that point, because if it once goes down it is hard to raise; if you have ever tried it you know, too, that after it is once sunk it is hard to bring to the surface. Now, I think you are pretty well satisfied with Gillespie; I want to tell you one thing; if he has not a little of this insurance money the fellow ought to get it, that is certain; he ought to have a little of it; but he has got to watch the Insurance Company close—if he don't they will pass a counterfeit bill upon him; just as sure as you are born, he has got to watch them close; he ought to be paid, and if he has not got it he ought to have it, and I am sorry Bro. Neal has left because he is the leader in that line; not that he himself would do anything wrong. Well now, let us see; here is John Williams who expressly swears:—and he is as honest a negro as I ever saw—"I was there that morning, I got up at daybreak, I got my breakfast, Gillespie was not there and I fed Gillespie's hog." My friend has said that one negro would not call another "boss," and there never was a negro that would feed another negro's hog if the other fellow was there. He says: "I did not see him; I got up and cooked my breakfast, I went out and staid there until half an hour after sun, and if this negro was there why I did not see him." But why should I waste my words upon a perjured witness? Why waste my words upon a witness that passed before you covered with infamy and shame? I will quit him.

Let us go to something else. Now, gentlemen, we come to black on the face. I am going out, because my general has ordered me to follow the enemy; if I fail it will be because God has not given me the power. Let us talk a little about the black on the face. Ah, Herring! He is a salted herring; there is no doubt that Herring saw him; yes, but poor Herring made a mistake, and the Solicitor led him in. Mr. Solicitor, you will allow me to call a little thing to your attention. Herring swore that he had a wide-brimmed hat with the brim turned out; the Solicitor picked up a hat and said, "Mr. Herring, was it a hat like that?" He said, no, it was a wide-brimmed hat with the brim turned down. Now, it is in evidence expressly that the hat with the brim turned down was at the creek. The prisoner did not get it until the Saturday after, and that was Wednesday; it was the Saturday after before the prisoner got that hat with the brim turned down, but Herring thought he had it when the Solicitor showed him the hat. It is bad, gentlemen, is it not? Brother, have I stepped out one line from the sworn testimony? But there is another little thing. Blacking was to be plainly seen; they tell you all these witnesses did not see it because they were not looking for blacking; McLean argues that these witnesses were not looking particularly for blacking. Why was Herring looking particularly for blacking? What made him search particularly for blacking! Herring said he had a seedy appearance. Nobody else said he had a seedy appearance, and he walked like an old man. Herring heard that he represented an old man in the concert; he jumped too far; he put a hat on the man two days before the prisoner got it. A seedy appearance. He says he was a member of McDougald's Sunday School class, that McDougald was the Superintendent of that Sunday School, and that he went there every Sunday, and it was proved positively that McDougald was Secretary and Treasurer, never did have a class, and that Herring only floated into that Sunday School once in his life. Hargrove and Aleck McKinnon prove it—one as good a Scotchman as ever drew breath. Gentlemen, don't you reckon this salted herring has been feeling a little of it; but he has got to look at it well, he has got to examine it well.

Let us pass on a little further about this blacking. Gentlemen, they have searched the earth, and now they want an Indian, and the only reason they don't get him is that there is a law in the United States that prevented them from carrying out the Comanchee Indian. They have employed some counsel here that leaped into the ring with a tomahawk and scalping

knife, and the greatest trophy they could have would be to go home with poor McDougald's scalp hanging to their side. But, thank Heaven, the hair is growing and will grow on McDougald's scalp for many years to come; they are not going to get that scalp—that scalp is not to be gotten. Let us go on with the blacking; Herring saw him, Greenwald saw him, who was on the other side—have they no others but them? Yes, away back on that road some fellow saw him; oh, yes, he was riding in an ox-cart, he saw some white on his face and on his hands. Would he be such a fool as to black himself and leave white spots on his hands? Not one word at the Mill Prong trial did he swear about that; why, nobody dreamed it was a white man blacked—that is a theory started since the Italian hand of this Insurance Company has started out; that has come on since that day. A white man blacked. Well, now let us hear who is on the other side. Mr. Powers says he saw him. Could he see him? He says the man was on the platform, and he stooped low in front of him and looked him right in the eyes. If this fellow Herring is to be believed, that the blacking was plainly to be seen, would not Powers have seen it? But Powers is covered with dirt; he is an engineer, and the fellow is so used to dirt he can't tell when he sees a clean face. Well, gentlemen, some of the counsel believe he ought to be hung for that, and when he went to Laurinburg and his face was red and clean, he ought to be hung for it. How was he to satisfy the gentlemen? If he is clean he washed it with soap, and if he has black on it he certainly ought to be hung. How is he to satisfy you? Powers said he saw no black, nothing unusual in his appearance. He did not see anything seedy, said he looked neat and nice, and he saw him at Maxton before he got on the train to go down.

Gentlemen, I tell you I have been at the bar twenty-one years, and I never saw such an attempt to take a man's life. The most trivial circumstance is worked into the case that has nothing on God's earth to do with it, and is brought out as proving the prisoner guilty. But they ask: "Mr. Powers, did you not say that he was drunk?" He says: "no." Gentlemen, where are your witnesses? If you knew you could not contradict him, was it fair to ask him, and if you could contradict him, the witness ought to have been put on the stand. He says, "No, I did not tell any such thing; I never told anything at all." They ask Phillips: "did you not say once there was something wrong?" "I did not say any such thing, some of them came to me and wanted to know if it was not so; I told him, no; every settlement I had ever had with him was fair and honest." They struck the wrong man when they struck Phillips with insurance money. Of course I do not pretend to say that these gentlemen here personally have had anything to do with it; they may know nothing, and I do not suppose did know anything about it, but I say there is evidence here, and strong evidence, that outside influence has been used. Well, gentlemen, then Sellers saw him, McGirt saw him; that is three, and there are but two on the other side. Crowson saw him next day—State's witness—and McCormick saw him next day, and they don't prove it; five saw no black on him, and two swore the black was on him. Well, gentlemen, cut out another link—gone like a summer dream. Is it possible that you believe that? I don't talk about doubts, but, gentlemen, if it was a civil case his Honor would tell you that if you believe those witnesses the burden of the proof is on the plaintiff, and if you find the evidence evenly divided you must find for the defendant. How is it when they are seeking the blood of the prisoner? They must prove it to you beyond a reasonable doubt, and yet they have the face to come up here and ask you to believe that he was blacked, when two men only swear he was, three swear positively he was not, and two other witnesses they are afraid to ask anything about it. Have you any doubt about that blacking? None on earth; can not have any doubt. The conductor that came down with him said that he had no black; he was not looking for it. Why was Herring prying out for black spots?

Now, gentlemen, come to the clothes. A negro found the clothes. He found them at the bridge. Now, listen, gentlemen. Have you noticed the prisoner? Does his eye betoken that he is an idiot or maniac? If he is

not, then he did not put those clothes here. Recollect where the clothes were found at Campbell's Bridge; here is a witness says that part of them were in the water in Lumber River, three or four feet from the bridge, six or seven feet from the public road—therefore to be seen from the public road by the passers-by. Would he have left them there? How many seconds would it have taken him to have folded them up, put a piece of wood or a rock to them, and thrown them in Lumber River, and they would have been hid for ever? Yet they tell you the prisoner put them there. Gentlemen, are your hearts so steeled to everything like mercy that you would have a madman hung? because if the prisoner did it he has lost his reason, and madness has taken possession of his brain. Yet they ask you upon that evidence to take the prisoner's life. What more do we find about the clothes? Now, do they tell you this? On the Friday afterwards, James McBryde got on the train and the prisoner was on; he asked the prisoner something about it; he says the prisoner did not talk much; but the prisoner afterwards got up, went on his seat and talked with him all the way to Lumberton; could he have talked any further? I do not know how, because James McBryde got off there. There is another thing that struck me. If I am mistaken, tell me—I got it that James McBryde said when he got on the train he thought he would go to Wilmington, but he changed his mind and stopped at Lumberton. The prisoner went on down to Wilmington. Why did he go back? Have the other counsel told you of it? Have the other counsel told you that James McBryde told him those clothes were there and he had better get them. When he got down to Wilmington he got to thinking about it and he says, "well, those clothes are here, I had better go back and get them," and he jumped on the train and went next day and got the clothes. But let us go back a moment. Bro. Neal says there was certainly some secrecy about getting on at the water-tank; oh, yes, there was secrecy in that, and he says that it was certainly Daniel McDougald. Why? Because Daniel McDougald told Cole his name was McDougald from Laurinburg; he asked him if he had any relatives in Cumberland, and he said, he did not know; yet he was secret about it; how in the name of Heaven could he have been any more public? They condemn him for getting on at the water-tank and then condemn him for telling all about himself. What did he do? He saw that there were a good many negroes about there, and he took the clothes; and what did he do in going along? He saw a man that had known him all his life; if any one could recognize the clothes, I should think he would, and that was Mac McKinnon. He showed them to his old friend Mac and said, "here are the clothes that have been found there," and he did say, "Mac, don't that look like somebody has been plowing in these clothes?" "No, I don't think so." But it was in evidence now some witness said that the pants were much worn. Well now, I think any of you might wear pants that were much worn, and I do not think that because a man plows and because he goes down the river with a raft that he cannot wear as good clothes as anyone. That seems to be the argument of friend McLean; I do not agree with him; I think some of you men that plow can wear as good clothes as we do, and better too I believe. Some of you men that go down the river and lead the active life of a raftsman, some of our greatest men did it; I think they said old Abe started out rafting, and they said he got to wearing pretty good clothes after awhile, though he was a sort of a hard looking fellow. But they say, no you farmers and raftsmen, you cannot wear as good clothes, therefore it was not a raftsman and it was not a plowman that wore those clothes.

Well, now, let us see. He went on then, and he met an impertinent fellow that was a blacksmith; he wanted to know all about the clothes and he don't show them to him, and therefore he is guilty and hang him. There is Hodgin; Hodgin wanted to know something about it, and he says he don't remember what he said to him, and he went on, strange to say, gentlemen, he went to John Conoley's. Well, gentlemen, that was wonderful; it was a wonderful thing for Dan. McDougald to go to his own uncle's; he went up to McBryde's; he left the clothes, like most anybody would do, in the buggy, and during that night somebody came and stole the clothes. Well, do they

contradict that? There was a good, honest country boy, and the State tried by cross-examination to lead him around the path, but he stuck to the truth, he carried out the old lady's injunction—that has not been done all in this case—he stuck to the truth. He says that his father and the prisoner went to bed that night; that after his uncle Simeon had been murdered they had taken particular caution to fasten the door with a screw, which the prisoner knew nothing about; he says there was but one window, that had no glass in it; the hinges to the shutter were off and the shutter was propped up, and nobody could get out without pushing down the shutter, and he says he did not go out that night. Honest boy that he was, tired from the labors of the day, with a good conscience and an honest heart, God gave him refreshing sleep, and he admitted it squarely and fairly, "I slept soundly;" if he had wanted to lie, he would have said he was restless. The counsel asked him, "did not you get up two or three times in the night?" He thought he would catch him, but no, "I did not get up, I slept soundly."

Well, he goes to McBryde, and McBryde says, "Look here, Dan., Millard Moore or some of them in the community are about fixing this thing on you." And afterwards McBryde said—and see with what learning and what astuteness they are keeping from you every word of evidence in favor of him. Do they tell you that McBryde said, "I was joking?" No, no, it don't drop from one of them; when they have talked to you, none of them have told you that McBryde said he was joking. Well, that satisfied him and he just did not make any reply, but said, "I can prove where I was," and that satisfied them. But, gentlemen, did you never come to this, to where you hear a thing, and the fellow tells you something that satisfies you, but afterwards you begin to doubt the explanation, and you begin to get a little more frightened about it; he goes on and that very night the clothes are stolen. Then fear seizes him and he says to himself: "Look here, the man that killed Sim. Conoley is after me; I have got the clothes that I suppose he wore, and he thinks I am on his track and he is after me and will murder me." Fear seizes him, and he says to his uncle, "I am afraid to go alone, send some one with me;" and they take a boy and send with him. They adopt the rule of Henry Lowry. "Dan., don't go like you went, go a different road; I will send my son with you a part of the way." He sends him with him, and if it is not in evidence discard it; if I get out of line stop me. He goes along then, and whom does he see next? He sees Purcell, tells Purcell that the clothes are stolen, that he was frightened, that his uncle's son had come with him two or three miles. I am not surprised that they forgot to say, gentlemen, that he wanted to get out of the country; this comes from their own witness, not ours, Purcell; he told him that he wanted to get out of the country, said that he was alarmed, that he was afraid he would be killed. This occurred on April 30th; April 26th, the clothes were stolen; April 30th he tells Purcell of his fear, that fear had taken possession of his heart and he wanted to leave the country. Gentlemen, he just had before him a most brutal murder; he heard of his uncle being shot down in cold blood, he knew that he had these clothes that were supposed to be the criminal's; he supposed the criminal was on his track. Well, who else did he see? He saw Johnson, and told him the same thing. McBryde told him that if he did not mind Millard Moore would fasten it on him. Well, then, when was it Livingston saw him? It was the 30th when he saw Purcell and tells him that fear had seized his soul and he must flee the country. On the 1st day of May he gets on the train. What does he say? "I got on the train to go to see Major Shaw;" Livingston sees him on the train and Livingston says: "I will be one of five men to go and hang the man that is guilty of this deed." Unfortunately mobs do not always decide right; when passions are once aroused in a man, they are the most fierce animals that are known. Why is it so? What did Hargrove tell you? Hargrove says he had a man charged with the crime, and the crowd said they were going to lynch him. Hargrove said, "if you lynch Kelly you will be just as guilty of murder as though you shot Conoley." So Kelly was discharged. Therefore, was it his innocence that saved him from the mob? Ah, no. Kelly was to be mobbed, although in a few moments afterwards he was

tried and set free, though the mob—and I shall tell you of mobs afterwards —cried out more and more, "hang him! hang him!" Did he have any other reason to be frightened? We are told by one or two witnesses that it was known in Laurinburg that this man Millard Moore had threatened his life; he knew furthermore that he had told McBryde that he believed Millard Moore killed his uncle; he knew Millard Moore had enough to arouse his passion; but I believe they will tell you Millard Moore was in jail, but he was not certain that the jail bars were always to keep Millard Moore. It had been heard, it is positively in evidence, that on the Friday before he left on Monday it was generally whispered that "the mob is out." Ah, gentlemen, you have been told that that arose because they knew the prisoner had left; it was not so; it was not known in Laurinburg that he had left until Monday evening; you have the best authority of the best men in Laurinburg that he would be back on Monday evening, and they would go down to that train to protect him from the mob; therefore it won't do to say this cry of the mob was raised because they thought he had left. The Sheriff of the County of Robeson was up there, he did not think he had left, he would not have come up there if the man had left.

Well, now, gentlemen, they charge us with the first falsehood they have caught the prisoner in; and I am going to be fair with you. He went to Wilmington; he told three or four people that he went to Wilmington on Tuesday. Who swears he did not? Is there a single human being that has made a contradictory statement about it? Who says he did not? The counsel for the prosecution, the two that have addressed you, and have made themselves witnesses, say he did not go to Wilmington. They are not witnesses, as they have not been sworn, you must not mind what they tell you; it is out of the records, you must check them up. Say, gentlemen, you are not witnesses, I can not pay any attention to what you say about this thing. Now, who says he did not go to Wilmington? Not a soul on earth except the counsel. Could not he have gone to Wilmington? He did go to Wilmington one evening and come back the next soon after that. Did not he do that? Whether he was at Alma or whether he was at Maxton, could not he have got on the evening train and gone down to Wilmington and come back exactly like he did? Who swears he did not? Anybody but Welsh? Welsh is a good man, but I say it is impossible for Welsh to remember that that man was not on his train on the 21st day of April unless there was something particular at that time to press it on his mind. But suppose Welsh is right; Welsh says: "I do not know but what an extra might have come up that night." What does he say, gentlemen? "I am weary and tired," and because, after traveling all night, he was lying down at 12 o'clock, the counsel say he ought to be hung for that. Then we come to a very important part of this case. Now, they charge it upon us, and they ask us who was it that went along there unless it was the prisoner? They have virtually asked us, and I expect you may ask youselves when you retire to the jury room, why did not they prove that somebody else killed Simeon Conoley? Why did not they prove that somebody else had a grudge against him, why did not they prove that somebody else had an opportunity to kill him, why did not they prove that Sim. Conoley said he thought somebody else would kill him? I will answer you why; we attempted it, and the State said it is against the law, and you can not do it; he shut our mouths, and now he complains because we do not open the mouth that he shut. Well, you may say there was some evidence about Millard Moore. His Honor testified to you that under the laws of North Carolina it is not admissible. It is a hard law, our dear old mother has a hard criminal law. In West Virginia it is different, in Georgia it is different, I think in most of the States the law is different, but I say his Honor testified that in North Carolina such is the law. Now listen, gentlemen: "Threats of other persons against the deceased are only hearsay, and could not be received as evidence in this case." State *vs.* Duncan, 6th Iredell, page 236. Even threats can not be proved, because it is hearsay evidence. Now, let us go a little further. "The declarations of the deceased that he feared A. B., not the defendant, would kill him, is not competent evidence." Second Jones, page 143. Let us go a

little further. "It is not competent to show that a third party had malice against the deceased, a motive to kill him, opportunity, and had uttered threats." State *vs.* Lambeth, 93d North Carolina, 618. Therefore, gentlemen, you see why we have not; the State of North Carolina might have been generous, she might have opened the door, but she said, "no, you can no do it."

Well, now, the motive. Give me your ears, gentlemen; I want you to tell me the motive in this case. They say the motive is this insurance. My friend Neal, I think it was, argued that the motive was that he wanted that land; my friend McLean said the prisoner already owned the land; he abused him for being the owner of the land, and he abused him for not selling them out under a mortgage. It cannot be that the land was the motive, because the land already belonged to him, and notice right here what a terrible condition we are all getting in, and I mean what I say. What influence did he have over Lizzie Conoley? This policy was got out in favor of Lizzie Conoley, Daniel McDougald is not named in it at all. What did Daniel McDougald do? According to the evidence Roper comes to Daniel McDougald, and he says, "I wish you would use your influence in getting a certain man to insure with me." He says he did not exactly call the man's name, but he made him to understand that it was Sim. Conoley; "and I want you to use your influence hereafter to get all the men around here to insure in my Company." No evidence of any influence over Conoley. Now here is the postal card he wrote: "You can send the policy, I will remit to you; Mr. Conoley arranged it with me to see you, so you can send or bring it when you get it approved." Now, is that anything? Here is the man who pays the policy for his uncle, who has given the payment to him; why in this insurance there was no motive sufficient for him to kill his uncle? If it is, now suppose your uncle comes to one of you and says, "I want to insure my life." You would say, "very well, uncle; I will pay the policy." "I want to insure it in favor of my sister." "I will pay the policy and you can secure me." He does secure you and you have paid that premium, and afterwards your uncle is killed, is that any reason on earth that you had any interest in this policy? Where do you get the interest? Where do you get the shade of an interest, such a motive as would cause a man to take his life? If they get this man hung, they will have to indict Lizzie Conoley. Why? Simply because, if he killed him, that would not prevent their paying it, but they would have to kill Lizzie Conoly. What do they show that letter for—that they can be so easily fooled; what was it brought here for, except that he was to fool Lizzie Conoley in some way about this insurance? I say it, as a matter of law, that unless they could prove that Lizzie Conoley was in some way connected with it, they could not prevent paying that policy. That is the whole motive; there is the motive in this case; it is the motive of the Insurance Company to prevent paying that $5,000. And, gentlemen, they would not only hang Daniel McDougald, but they would hang his Honor and the jury, and all the counsel for the defence, and if they did not hang the counsel for the prosecution so as to take their lives, they would hang them so as to make them feel very uncomfortable, in order to prevent paying this $5,000, and that is the whole object of this Insurance Company here to-day.

Gentlemen, did he have any reason to do this? Why, he was in good circumstances; there is no evidence in the world, except one man, that Conoley was in such poor circumstances that he could not secure this money. McDougald was in good circumstances, there was no trouble in the world about that.

Then, gentlemen, we come to the shoes. What about the shoes? There is nothing about that except that it was an 8 shoe, and the prisoner said, "why, I think that shoe will about fit me." Would he have done that if he was guilty? It is said that he rubbed out the tracks. On cross-examination, the witness merely said that he walked over one of the tracks; there were hundreds of tracks there; would walking over one track rub out the whole thing?

Here, then is friend McRae. I have not very much to say against friend McRae; I did hear that McRae, after he had taken out this warrant

against the prisoner, after he was sent there as an under bailiff by the State of North Carolina—I say that he ought not to talk to the prisoner about this case, knowing that he was going to be a witness, and I think if he did it he ought not to have done it. The rule now is that the officer shall say nothing to the prisoner. McRae spoke to him, sympathized with him, and told him that if he could clear this thing up it would be all right with him; if he could show himself up on the night of the murder it would be all right. He said, "that might be right hard to do;" and that is all the prisoner replied. Then you come to the candy. I will not stop on that. It is shown, the prosecution say, that he took him off to himself and dosed him. The evidence of Wilkes is that he did not eat the candy till he got to Wilkes' house; he pulled it out of his pocket and ate some of it, Wilkes ate two of the drops and his children ate some and it did not hurt them. The evidence is that Conoley was taken sick; if Dr. Prince is to be believed, and everybody gives him a high character, not only as a man, but as a physician, a man learned in his work—that if he took strychnine no emetic would save him after fifteen minutes. He did take an emetic and the emetic cured; therefore, in all deference to Dr. Prince, I bow to his superior learning and say that it could not have been strychnine that he was affected with, and as has been said to you, so far as the candy is concerned, it certainly could not have affected his standing, because after that candy was given we have proven that no man bore a better character than Daniel McDougald in the town of Laurinburg. What did he do? Some little boy says that he saw him fumbling around there, that he did not notice very much; that he was sweeping out the store. As proven afterwards, the prisoner said, "you need not bother, I will go and get the candy," and he goes and says, "well, I will take some of those there out of the show-case." Then he comes in and asks whether Dr. Everington or Dr. Prince are in. He says he is not in a hurry; after he came in, he says to Dr. Prince: "I heard that that candy that I gave Sim. Conoley had something the matter with it, I want you to look at it." He could not have done better than that. The doctors looked at it, and they say that they found some strychnine in the candy, there was some there; but I say, if you believe Dr. Prince, strychnine was not the cause of the man's sickness; I say if you believe what Wilkes said, that Conoley had the candy in his pocket, and that he ate some, and one of Wilkes' children ate some, and they were not injured in the least, then was the candy poisoned? I think not; cannot be. Certainly you must have at least a reasonable doubt about the poisoning of the candy.

Well, gentlemen, I do not know that it is any use to refer to the duster. What was the color of it? Phillips said it was mud-color, Lockamy said the duster was light, Charlotte Dumas said it was light, McPhail said dove-colored. They make a great deal of fuss about the whiskers. Robbins tells you expressly that he got the whiskers; they charge that at the concert that he had whiskers across his face, but my brother that has just addressed you says he don't rely upon the concert at all.

[Here Col. French requested an adjournment of Court, which was granted for the day. The argument was resumed on the next day, November 28th.]

May it please your Honor and gentlemen of the jury:—I hope that you return to your labors this morning refreshed by the slumbers of the night; and I am glad to say to you that in looking over my notes, just before I retired last night, I do not think that I shall have to trouble you much longer. But I ask you not to be weary; I ask you to remember the heavy responsibility that hangs over me in this case; I ask you to ask yourself the question: do you think the prisoner and his father and his mother think that I have tarried with you too long? I was calling your attention last night, when you were weary and I was weary, as to the motive in this cause. I lay down and I lay it down without fear of contradiction, never since God made Adam has a man—if a sane man—killed a human being without motive. Sometimes a man gets frenzied, and as the law shows frenzy or anger takes possession of reason, and when we strike down a fellow-being, the law is so merciful that she says when that is done, it is not murder; that the

man for the time is insane; that he is frenzied and it is but manslaughter. I say the kindness of the law says that, and I ask those gentlemen, when they address the jury, skilled lawyers as they are, to show me the motive in this case. Has the evidence that they have put upon the stand carried conviction to your mind, such conviction as convinces you beyond a reasonable doubt, to a moral certainty, that that motive exists? They cannot do it. Well, now, let me refer you for a moment as to that question of motive: "The particular interest the person has in the perpetration of an act, by reason of advantages accruing to him from the crime, as where the accused was the heir at law of the deceased and in impoverished circumstances, or in which he previously secured a will in which he was a legatee." So, in laying down the law as to what the Solicitor should do first or what his duty is when he attempts to take life, they say that the first thing is a motive.

Now, let us look at it calmly and quietly. What motive is there in this case? According to Roper he went to Laurinburg and asked the defendant to try and get this identical insurance upon Sim. Conoley; he says no names were called, but he was referring to him and everybody knew what insurance he wanted; that he asked him to give him his influence generally in getting insurance in that country, and that afterwards he came down there, Sim. Conoley was examined by a physician, signed the certificate, made his application, and I suppose signed it, because Roper's name is a witness to it—this very witness himself is a witness to the application; it is sent for and the prisoner merely writes him a postal card, which I read to you last night, stating that he could send on the application, that his uncle had made arrangements with him, and that he would pay the premium. Now, gentlemen note that as far as it goes. If his uncle was killed would the prisoner get it? For whose benefit was the insurance? Not for the prisoner, oh, no; but for Lizzie Conoley; suppose Lizzie Conoley was killed, was the prisoner her heir? Ah, no, she had a son who would have inherited it from her, she had brothers and sisters, she had a mother; all these would have taken it before the prisoner could have gotten any. Was the prisoner pressed for money? Did he have a large family of children crying for bread, a wife upon a bed of sickness without the necessaries of life? Ah, no; a young man in good circumstances, worth four or five thousand dollars. His Honor remarked from the Bench when they offered it, "I cannot see any connection with the prisoner." I say, and I say without fear of contradiction, that the Insurance Company must have some motive and that the only motive that they can have is to prevent paying that $5,000, and in order to do that they must connect Lizzie Conoley with the crime; if they convict Daniel McDougald, the first thing you will hear is that they are attempting to find an indictment against Lizzie Conoley, because they cannot carry out their purpose without it; they have searched and it is impossible for them to carry out that purpose unless they go further; therefore, I can see no way on earth in which they can show you the motive that induced the prisoner to kill Simeon Conoley, and I am not afraid that you men will take the prisoner's life until the State of North Carolina shows you some motive that he had for taking it.

On yesterday there were some references to circumstantial evidence that I did not give you. I refer to Wharton, Vol. 1st, page 740, 742, 743. Now, I ask you to listen to what the law says concerning circumstantial evidence. [Reads extract.] In direct evidence you have but one fact to find, has the man lied that is testifying that he saw Sim. Conoley killed by Daniel McDougald? If he has not, then that is the end of my inquiry, I can find a verdict of guilty. But how is it in circumstantial evidence? You have not only to find here, has the man told the truth about that particular fact, but to draw just conclusions from it. Do I believe that the witness swore right, for instance, that he was disguised in a duster at the concert? I will come to that afterwards. If you could believe that, you say, "well I do believe that, but what has that got to do with it, how much weight ought I to put in that to convince me that the prisoner is guilty?" Positive evidence is best for two reasons, you have not got to find but one thing in circumstantial evidence, you have got to find the fact and you have got to consider it; you have got to show how much weight it ought to have in the chain. Yet

we hear from the other side, why do not you prove him innocent? My good friend there wanted you to know that we would not attempt to prove him innocent, but that we would befog your minds. I know you won't attempt to prove him innocent. Now, as I tell you, I want to be perfectly candid with you. There was something about these pants. They say they were pepper-and-salt pants found there at the river. Robbins did swear that he thought the prisoner had pepper-and-salt pants at one time; Phillips, who was intimate with him, who knew him well, says he never had any that he knew of; that he wore blue flannel pants. Currie, who says he only saw him about once in every twelve months, undertakes to swear that at one time he had pepper-and-salt pants; but they have never told you one word about it. My honorable friend that opened this prosecution did not tell you that Sallie Wilkes swore they were dark pants before the examination at Mill Prong; she swore the pants were exactly the same color that this old lady swore they were, but not one word comes from them as to that. Therefore, if that be correct, if the pants were dark pants, they have overturned the pants theory about those found at the river.

As far as I remember, the evidence on both sides had closed; the evidence of the defense, so far as they were repelling the assaults of the enemy —then what? Then this old lady comes upon the stand and swears to you positively in substance that she was there; that through that door she saw the party there; that his form was not like the prisoner; that he was a slim, long legged, tall man, exactly the description that Sallie Wilkes gives us—Sallie Wilkes and she tally exactly. Sallie Wilkes says he was as tall and slim as Sim. Conoley at least, and the old lady tells you she saw him; that the moon was shining as bright as day; that she saw him as he went there; that some wind passed by and took up whatever was around him and put it under his arm, and she saw to his waist, and she says, before you and before her God, that it was not the prisoner at the bar. One reason she says that she knew it was not, was because he was taller than Simeon Conoley; saw them walking side by side, and Simeon Conoley was taller than the prisoner. They gave up the plot, did they not? They failed signally in their effort that was to convict the old woman of perjury and take the prisoner's life. Was not that the object of it? What else was it? Could there be any other? Their own witness swore that it was thirty steps beyond the corner of the house, and yet he says, "I don't know who got it up, I don't pretend to say who got it up."

So gentlemen, I say that they were attempting to convict of perjury this old lady, eighty-six years old, but whose mind is as clear as the noonday sun—trying to convict her of perjury, who is on the very verge of the grave and who must soon appear before that All-Seeing Eye which pervades the innermost recesses of the human heart, and will reward us according to our merits—the great I AM, who will punish perjury. Does not she know but that a few short days and she must appear before her God? Does not she know that if she comes there covered with perjury that He will pronounce the awful sentence on her, "Depart from me, ye cursed?" Do you believe it? Can you think it? That she would come here and deliberately commit perjury, perjury and perjury for whom? According to the gentlemen, the very man that had stained his hands with the blood of her son. Oh how unnatural—smile if you can. I see nothing to smile at. See the mother weeping and the counsel smiling! Gentlemen, they have put upon the stand two witnesses that said the old lady told them that she knew nothing about it; that was McLauchlin and McNair; they went on the stand and testified to a weak attempt of Dr. Lewis, that he went there and said he wanted to hear from all that knew anything about it, and the old lady did not testify; I say they put them upon the stand to damn her and take the life of the prisoner; but my honored friend was praying here, blessing her with his mouth and stabbing her with his hand.

Cole comes on the stand and says this: "I was there on that night; I did go, and I went to that store and I bought crackers, and there was another man with me" Could not that other man have left the clothes? But throw the clothes to the wind, because there is no evidence, not a shadow to

connect them with the prisoner, unless he be a madman. I have reviewed the situation of the clothes, where they were found, there by the river, absolutely before you, in plain view of one of the most public roads in the county of Robeson, left there; and as I told you before, but I will repeat it, so far as this man is concerned where he washed my friend McLean thinks has no connection with it: I think it was honorable in him to give it up, a witness covered with perjury and corruption as he was, could not handle him before this Court; but Mr. Neal swung to it and he tried to make you believe that what he told was the truth; "whom the gods wish to destroy, they first make mad," and they have done it with them. Do they agree at all? My friend McLean did not give up the concert matter, did he? Oh, no. Friend Neal came along and said, "that has got nothing to do with the case; I do not care anything about the concert, nothing in the world," and they were at least one or two days putting witnesses on the stand to prove that that man wore the duster at the concert, and was carrying out the same disguise as at the concert. Gentlemen, was it not wrong for them to take up one or two days for evidence that was totally immaterial? "Oh," says Neal, "I care nothing about the concert." I reckon not, when they put a man on the stand who says, "it was not a duster, it was an old cutaway coat; I turned it and put it upon the prisoner, and I remember very distinctly that its arms were lined with white stuff." When Phillips comes upon the stand he says "The prisoner did not wear the duster, I wore it." "Where did you get it?" And like an honest man he says, "I got it from a negro and I returned it to him." Yet the State of North Carolina seeks for the blood of the prisoner and examined them to prove that they did not know the prisoner in the duster, did not know that it was McDougald; I reckon not, because it was not McDougald, but Phillips; how in the name of Heavens could they have known it was McDougald when it was a different man? "His disguise was so perfect they did not know him." I reckon not, for it was not the man at all. They have been so badly whipped that they have absolutely to quit the field and give it up; they have deserted their colors on that point; they must desert them on all before they are through.

Now, let us see, gentlemen. I am going to repeat to you something which I say is the law from these books. I want you to ask yourselves these questions. When each one of these allegations made out by the State to convict the prisoner and make out the chain by which they expect to hang him, when each one of these allegations come up before you in the jury room to decide, I want you fairly to ask yourselves these questions: "Am I as fully satisfied beyond a reasonable doubt, to a moral certainty, that this allegation is true, as I am of the death of Simeon Conoley?" "Am I as fully satisfied of the truth of this allegation as I would require to be if the whole case turned upon that fact? If it was my sworn duty to say that the prisoner was guilty of murder upon my finding that this allegation was the truth, and not guilty upon my finding it was not true, would my verdict be guilty or not guilty?" The law says that each one of those facts you must bring up and put them to that test, which some of the counsel seem to have forgotten entirely was their duty in this case; I feel sorry for them, they could not do it, but they ought to have gotten up and said they could not do it. They seem to think it was entirely our duty to prove the prisoner innocent; it was a duty, but I believe we have done it. As I shall show you afterwards, the prisoner commanded his troops, go out and scatter the enemy; they have assaulted me first, I have a right to stand, to call counsel, and say not a word, but I want to clear this thing up, go out and assault the enemy. We went out, and with Mrs. Effie Conoly, the old lady, we assaulted the enemy. What more? It is the duty of the State to prove to you in the manner before stated every single allegation upon which they rely for the conviction of the prisoner, and if they have failed to so prove to you each allegation it is your duty to acquit the prisoner. Recollect it is one continuous chain that they rely on to convict the prisoner. It is the duty of the State to prove every one of these allegations that they rely on. If they did not rely on each one of them why do they take up the time of the Court in this cause to examine witnesses on them? Now what? After you find

all these allegations are true, do they prove to my mind to a moral certainty, beyond a reasonable doubt, that the prisoner committed the deed? Then see how much weight each one of these allegations that prove to be true ought to have in the chain? Does this evidence exclude from my mind every reasonable hypothesis of his innocence, every reasonable supposition that any other person committed the deed; and if you should so find, it is your sworn duty to acquit the prisoner. I have shown you, last night, that, in North Carolina, if A. B. said before this trial "I killed Simeon Conoly," or Simeon Conoly had said he was afraid A. B. would kill him, that if you prove A. B. had opportunity and motive, and that he absolutely said he did the killing, under the laws of North Carolina, if objected by the State and they did object, we could not prove it. I say it is a bloody law; I say that our grand old State has not exactly kept up with the advancement; she has not incorporated in her laws that mercy that is incorporated in some of the other States, in Western Virginia, in Georgia, and I doubt not in most of the States; but North Carolina moves slowly; she is good, she is honest, she is pure, but she moves slowly in all things. She has got upon her the old bloody criminal law, in a great measure, of the past; she has got some of the law, in some respects, in the pages of Blackstone, where you remember there are a great many criminal felonies; one was to cut a cherry tree upon the land of a Lord, and you forfeit your life; I say she has still in her much of the impress of that old law.

Gentlemen of the jury, I tell you, before coming to that conclusion, that the prisoner is guilty, you have a right to ask yourself this question, "does the evidence prove to my mind as fully, clearly and satisfactorily that Daniel McDougald killed Simeon Conoly as if one witness of good character had sworn that he had seen him do it?" I say that you have a right to put that question to your mind. (Reads from State vs. Swink, Devereux and Battle, Vol. 2, page 9, particularly on page 17.) I will admit that in the 74th North Carolina they have reviewed Swink; I admit it, my friend, I am not going to do like you did, state all the evidence for the prosecution and none for the defense.

Let us for a few moments take in review all their allegations; let us put the test to them, your guiding star, your needle from which you should not vary, the needle that is to carry you safely through the stormy waters of this case. What is the first allegation? That he was disguised in these concerts as a negro, and had on a duster. Do you fully believe to a moral certainty that that is true? You cannot do it, because it has been proven exactly the opposite. Well, let us go a little further; the only thing that they get, the nearest to proof, was that the prisoner was at Maxton on the morning of the 21st; are you convinced to a moral certainty that that is so? are you not convinced that it is not so by their own witnesses? My friend never told you a word about it; you never heard about Phillips, you never heard one word from his mouth about DeVane; oh, no; and unless they prove that their witness, T. E. Phillips, of this town, committed deliberate perjury, the prisoner was not there on the 21st. Phillips came on the stand and swore that he saw him there, at the same time says he saw him at Red Springs; he goes on the stand afterwards and says, "I did not swear to it." But we prove by documentary evidence and the records of the railroad—they tell you that Phillips went out on no special on the 21st, but they tell you that he went out on the 24th and not the 21st; gentlemen, they must convict their witness of perjury, and heaven knows they have done enough. My friend Archie took one, and I suppose my friend Rowland will take the next. Did he not leave out that man Gillespie, did he not say leave him out of the case, that he had been sworn to be of bad character. But, gentlemen, I do not want to drop the poor fellow; some man swore that his character was good. I say then you have it absolutely certain, and you have DeVane. Was it right, was it fair in my friend not to tell you that DeVane said expressly that he walked and talked with the man on the train and that he did not believe it was the prisoner. Upon that fact, suppose you put the test: Do I believe he got on the train as fairly as I believe in the death of Sim. Conoley? Talk about doubts; they are covered with doubts, they have

left everything in doubt. When you come in and hold up the scales of justice they stand trembling and at last come to an even balance; you must weigh, you must judge, you must prove, if the scales hang even find for the defendant.

After he gets on the train at Maxton, is there a human being pretends to swear that he is the prisoner when he gets on that train at 7 or 8 o'clock on 21st, or do they pretend to locate him for the twenty-four hours till Wednesday at the same time, when they say they locate him at Maxton? Is not that so? Yet the gentleman that argues this case tells you that if he had the least doubt about the guilt of this prisoner he would quit the case; has not he got some doubts about that? Is his mind so impressed against the prisoner that even that don't raise doubts in him. Suppose that was a civil case and they left out all that, and how long would it take you to decide for him? Oh, but Charlotte Dumas saw him, or at least she saw a man that had on a duster, and Cottingham says that everybody was wearing dusters; and Charlotte saw him and said he had a light duster and had something strapped across his back, and he was a white man walking down the railroad. And McPhail, a good man, saw a man there and he had on a dove colored duster. Presto change! I have not referred much to my friend Neal, because I have not time, and I did not refer to one-third of my notes of my friend Archie for I did not have the time; but Neal used one expression, gentlemen, that I noticed; Neal said he was going to wash his hands of this cause; but, in the name of heaven, you cannot wash your hands of this cause and, like Pontius Pilate, say, "I find no fault in this man," yet the multitude cry all the more, "crucify him! crucify him!" and Pontius Pilate, naturally a good man but wanting the back bone that a great many men want, could not stand against the multitude, and says, "I will wash my hands and give the Son of Man to the multitude to be crucified." Neal is washing his hands, you cannot wash your hands, you not only cannot wash your hands, but, as good, honest, upright men, you do not want to wash your hands, you have got nothing to wash for. You are about to do your duty, and you are not going to imitate Pontius Pilate; no, even if the multitude were howling, you would bring out the best verdict in this case and it would be the prisoner at the bar is not guilty. You have got backbone.

Was there any talk about his being a blacked white man in disguise until all this feeling was gotten up? Not a word at Mill Prong examination; I am informed by authority that they did not speak anything about a white man in disguise. Everyone swore that it was a negro. The coroner's verdict put the stigma upon poor Johnson, that he was guilty; but it accused him falsely, if these witnesses are now to be believed, and they state they are. They knew it, they knew that they had been sworn to tell the truth, the whole truth and nothing but the truth, and they kept out the very evidence that was to release Johnson. Gentlemen of the jury, I will say no more than this: if they kept it back they knew it was true, they were on a trial of life and death, they are now on a trial of life and death, what confidence can be put in their testimony?

Then, gentlemen, we come to Gillespie. I do not know what to say about Gillespie; I think friend Archie is about as good authority as friend Neal, and friend Archie says he won't discuss it; when the lawyers disagree I think that the prisoner ought to be released, and those lawyers have disagreed square and fair. My friend Archie never told you that the man washed outside the house; it was then day and he washed outside; a great many strangers passed there, and the reason, as Brother Neal says, that he did not wash in the swamps was that he was afraid somebody would see him. But inbroad daylight he goes, and outside of a house in one of the most public roads in the county of Robeson, he washes his face. Heaven, what reasoning! Well now, my friends, there is a good honest negro who comes up; says he was there that morning, and he is not lying; he says if this fellow was there he did not see him, if the prisoner was there he did not see him; there was only a slight partition between the houses, and he said he did not see the prisoner, and more than that he fed Gillespie's hog. I will see what

my friend Rowland does; they are to follow afterwards, I do not know whether they will follow friend Archie or friend Neal, one on one side and one on the other taking different roads. The law says they must prove everything that is essential. Did not they make a terrible mistake?

Do not tire, gentlemen, we will go on a little further. Then there is the blacking the next morning; well, they failed on that about as badly as anything can be; the salted Herring said he had blacking on him; that it was plainly to be seen, that anybody could see it; that was his language. Did my friend Archie remember that? If he remembered it, was it right to keep it out, and if he did not remember that, how do you know how much he has forgotten; he certainly forgot all the law in the case when he told you the prisoner had to prove himself innocent, but so biased was he that he forgot all the law except that he wanted the scalp of McDougald. Then they bring their Hebrew here; you have heard of a mob that howled around Pontius Pilate, well they bring one of them here and he says he saw him on that day, and he had a little dark under his eye. Herring said he was in McDougald's Sunday School class and that McDougald was Superintendent; Mr. Hargrove and Mr. Aleck McKinnon, as good men as ever lived, say that is a whole cloth lie; McDougald never was Superintendent, and never had a class, and they had never seen that fellow there but once in his life.

McDougald was standing on the platform, Powers was down here; "McDougald stooped thus, and I talked to him, my face was in a foot of him; I looked him right in the face and there was no black." Herring says it was plainly to be seen, anybody could see it. But they say that Powers is a dirty sort of a fellow, and that he runs railroad trains and is used to dirt, and a fellow's face could not be so black that poor Powers should notice it. I do not think that every man that runs a train is so filthy and dirty that absolutely when he sees a man he can't tell whether he looks decent or not.

[Mr. McLean interrupts to say, "Do you say I make that statement? I said nothing of that sort."]

I take it back, I thought it was Mr. McLean. It was Mr. Neal. Well, gentlemen, if I do not get into the right man, I get into the right pew of the church; it was in the prosecution; I just happened to hit the wrong sinner, but I hit the sinner in the church and in the pew; I beg his pardon, if he was not the man. Powers, Sellers, McGirt, three of them, swear he did not have any black on his face; but two swear he did. Haddocks swears he did; McCormick saw him next day, and he don't prove by McCormick that he had any black on his face. Crowson saw him next day; he is the fellow that said the prisoner was terribly hungry, ravenously hungry, and in the name of heavens what did he ask for? Oranges. Right light diet for a ravenously hungry man; I think a little bacon would have satisfied a very hungry man better. Now, gentlemen, let us take that issue. Suppose that was a civil issue before you; all the doubts are on their side, all the fog, all the confusion they have left with you. Suppose that was a civil case, suppose it turned upon that fact, would it take you two seconds to say it was false? Not only has the plaintiff failed to put the preponderance of evidence in his favor, but when you hold up the scale of justice, the side that the plaintiff was in would come up like a feather, and the side the defendant was in would go down, the weight would be strong on his side. So can there be any doubt upon that issue? None in the world.

Well, gentlemen, that is about the whole thing, is it not? What else is there? They say he fled, and I do not pretend to question the exact language. My friend said he fled because Conoley's ghost was following him all the days of his life, and he quoted a piece from "Festus;" right good thing, they say it was written by a madman and a lawyer; I am not surprised at my friend quoting from a crazy man. Brother Neal spoke so much about railroads, if he had been a conductor for forty years I don't think he could have used much more railroad slang. I showed you how about the 29th he went to Laurinburg; I showed you how he got the clothes about the 26th; I showed you how about the 30th he became seized with fear, when he found they were stolen, because he thought that the murderer was trying to hunt him up to kill him. I have shown you how he went along that road, telling

Purcell and others that he was frightened, that he got his uncle's son to go with him. I have shown you how on the first of May he boarded a train to see a lawyer, but he had begun to be frightened, and Livingston tells him on the train, as I told you before, that he would be one of five men to hang the man that murdered Simeon Conoley. We have shown you that Millard Moore had threatened to kill him before; that his threats were known before he left; we have shown Millard Moore had threatened his uncle, Sim. Conoley, if he put his foot upon a piece of land that Sim. said Millard Moore had a fraudulent deed for; we have shown you the threats in the county before they knew he had left, because they were made on Saturday and nobody knew he had left till Monday evening. Was there no cause to alarm the poor prisoner, when the citizens of Laurinburg got so alarmed that they went down in a body to meet him at the train in order to guard him? It aroused their fears, and in the name of Heaven were they more interested in McDougald than McDougald was interested in himself?

How do you know he did not go to Wilmington? It was proven by McBryde that he went to Wilmington a short time after that and came back on the freight train, and my good friend did not tell you that McBryde told him the clothes were there, and he went right back and got them. They have not given us this whole cause; they have kept from us, at least they have not told us the evidence for the defense. I say they might not have meant any wrong by it, but oh, my God! the consequences to the prisoner might be equally as fatal, yet he is pure as an angel from heaven. I say you cannot tell, it is impossible for you to tell anything about whether he went to Wilmington or not. He had an opportunity to go to Wilmington and he might have gone He told Livingston on the train that the clothes would be at the hearing. Well, now, gentlemen, I say that Livingston may be mistaken; when he went and told the Sheriff about it he told a somewhat different tale; he says that he told him they would be at the trial, and they were in John D. Shaw, Jr.'s office. But when he went to tell the Sheriff about it, being in the office was left out. They have been hearing all about these things since the 21st, and we find some witnesses must be wrong; we find that Lyon must we wrong when he said the prisoner told him it must be a white man disguised. Suppose the prisoner is shaking with fear when he heard Livingston talk about lynching; don't you rembember Hargrove said that he had Kelly up there for trial, and the crowd was going to mob Kelly, and he said, "gentlemen, if you mob Kelly you will be guilty of murder," but it was all he could do to save poor Kelly's life, and Kelly in a few moments was proved innocent. If mobs only hang guilty men and innocent men go free, mob law, instead of being that terrible thing that we have heard of and fear, that terrible thing that the law attempts to crush, is a power for good, and let us do away with our courts and exchange law for mob law.

Is there anything else? Is there any other testimony? We have gone over the shoes, the clothes, traced him to Maxton, taken up the theory of the State, that he went from Maxton to Shandon and went on and murdered the man. I do not see that there is anything more in this theory for me to take up and argue to you. So far as I can see, it seems to me that I have gone fairly and squarely through it. As I said before, the prisoner finding that the assaults of the State upon him were like the ripples of the waves of the Mediterranean on a summer eve against the rock of Gibralter, he himself attacked the enemy. The law does not require it of him; the defense assaulted their enemy, and by this testimony of Mrs. Effie Conoley broke their battalions, captured their banners, took their standards, scattered their troops like leaves before the autumn wind. Yes, not only has Daniel McDougald repelled the assaults of the State, but he now holds in his hands the standards taken from North Carolina; never was defeat more overwhelming, never was victory more complete. I say, not only has the State failed to prove him guily, but he himself has proved to you that he was not guilty. And now, gentlemen, that being so, give back to that mother her boy. Doubtless time and again during the progress of this trial, in fancy's glass, while his character was being proved to be so pure, she remembered the time

he knelt at her knee and she had taught him his duty to his God, his family and his fellows. Further, I expect she thanks her God that she so performed her duty and performed it so well.

Now, I ask you, shall this boy of her's that she has taught from his infancy, to walk in the paths prescribed by his Maker, shall this child of good parents save this corporation from paying $5,000 that they honestly owe to a daughter of North Carolina. Gentlemen, I see it in your countenances that your hearts are overflowing with desire and your lips are impatient for the time to come when you can turn from the mother this sorrow, when you will proclaim in a voice of thunder "not guilty," and carry to her burdened heart, to the heart of his father, to the heart of kindred, to the heart of his friends, joy and sunshine; yes, when you will proclaim those words and break the chain which now binds him, release him from a felon's cell with its impure air and let him again pass into God's glorious sunshine, and breathe again the balmy and pure air from heaven. Yes, gentlemen, with full confidence, I leave the prisoner's life in your hands, fully believing that you will do you duty in this cause.

HON. ALFRED ROWLAND—FOR THE PROSECUTION.

HON. ALFRED ROWLAND, of Lumberton, N. C.

May it Please Your Honor and Gentlemen of the Jury:

Col. French on yesterday afternoon commenced his speech by declaring that the leader of the defence in this case, had ordered him to the front to find the enemy and to report. I gather from the argument of the counsel that some of you have been soldiers; if so, you know that it is the light skirmishers who are sent to the front; so he was commanded to go, taking with him his banner with "victory" written upon it; he has returned, gentlemen of the jury; the word "victory" has been obliterated from the banner, and yet you, as citizens of Cumberland county, should be profoundly grateful to the distinguished counsel, because he has informed you of one fact, which you, not only as North Carolinians but as citizens of Cumberland county, never heard of before. He takes you, gentlemen, in this mission in search of the enemy, across the American continent, across the mighty waste of waters that separates us from distant lands, and he tells you, gentlemen of the jury, that he discovered that your most distinguished son, Mr. Dobbin, while Secretary of the Navy, in this far distant land, created a new nation in the twinkling of an eye. As he spoke to you, gentlemen of the jury, I almost listened to hear the rustling of the mighty wings of the glorious Dobbin coming down from a better world to thank the distinguished counsel for informing the people of Cumberland of what he had done. Dobbin created it, French discovered it.

Gentlemen of the jury, I do not propose to follow his argument. You know that, having traveled so far and so rapidly, he must, as he says, be wearied; and while his mind, gentlemen of the jury, must be more or less affected by the incidents of the journey, I gather from his argument that he has embodied some of the customs and manners of the Japanese, or else he would not have said deliberately in a court of justice that he thanked Almighty God that his associates and his friends were not witnesses in this cause; it may be a Japanese custom, certainly it is not a Scotch or an American custom. Gentlemen of the jury, I call your attention to one other point in his argument and then I think I will abandon it: he eloquently speaks

of one son of North Carolina, whose decisions have been quoted in Westminster, one who is famed not only in America but in Europe as a distinguished jurist; he calls attention to an elaborate opinion by Mr. Ruffin, and he tells you, gentlemen, that he disagrees with him.

Now, gentlemen of the jury, the counsel who first addressed you, in eloquent language, pointed the defendant out to you as a child of the Covenant, as a descendant of that mighty race, who, alone of all races in this earth, have never been conquered or subdued; stern and rugged as their native hills of old Caledonia, they have never bowed the knee to any master, but have always been sturdy and honest; children of the Covenant indeed they were, and they preserve their religion, the right to worship Almighty God, and they have preserved it in a way that no other class of people have preserved it; they have won fame and honor in every time. Scotchmen indeed you are, and well may you be proud of the fact. But gentlemen, I am here to-day to tell you something of another child of the Covenant, another in whose veins the same blood was flowing as that which flows through the veins of the prisoner at the bar, a quiet, honest, simple man; a man who by his daily labor earned his daily bread, a mad who walked in and out among his people of Robeson, and who was known for his simplicity, his honesty. But two of the counsel in this case have had a good word to say for poor Sim. Conoley, of this poor man who lies in an untimely grave near the old church at Antioch. A child of the Covenant—for some wise purpose of His own the Almighty Jehovah withdrew His helping hand and Sim. Conoley has met his God. On a calm, quiet night in April last, beneath the shimmering moonlight, Simeon Conoley, in the kindness of his heart, undertook to guide one to the house of a neighbor; I can almost see his slender form and stooped shoulders, his shambling footsteps as he walked in advance of his murderer, through the moonlight down near the field, and I have wondered during the progress of this cause if that man, if it be the defendant, an officer in the church, trained in the Sunday School, taught the catechism at his mother's knee, learning through all his life the lessons of the Bible, if indeed it be he who committed this foul deed, if he had thought of the words of the mighty prophet of old who said that God would send one to whisper in our ears, "This is the pathway, walk ye in it and turn neither to the right hand nor the left." They reached the field, the fatal shot was fired and Simeon Conoley fell, according to the testimony of sworn witnesses, because according to the testimony the murderer then came around in front of him, squatted down and fired the last and the fatal shot, and the bullet was found in the ground beneath Simeon Conoley. The silver moon still shed light over all that land, the life blood ebbed, and there from the head of Simeon Conoley his guilty murderer must have seen it and believed that every shaking leaf, every dark spot in the lonely woods, was filled with the murdered spirit of his victim. The counsel for the defense who has just taken his seat tells you that the defendant has proved that he is not the guilty man. God grant that he has. There is no blood in my heart, there is no desire on my part to take the life of any human being; I come here at the instance of no corporation, no capitalists, pleading for the death of any man. I come, gentlemen of the jury, at the call of the people amongst whom I was born and raised, to ask you in their name, in behalf of their protection, to find the murderer. I expect to endeavor to perform that duty honestly and fairly. I shall not deal in criminations against counsel; I believe that they are all honorable, high-toned gentlemen; some of them I have known from my childhood, and I know that any one might be glad to occupy their positions in the estimation of the people of this country. But it is my duty to present this case to you fairly and honestly, to aid you in my humble way to see that justice is done. If I shall have accomplished this, with no harsh words towards any one, I shall be satisfied that I have done my duty.

The first thing, gentlemen of the jury, that you are to endeavor to do in this cause is to take this testimony, when you go into that jury room and see if you cannot come to a just and correct conclusion, without the necessity of saying that any man has sworn falsely; reconcile the testimony if you can;

let no evil spirit come between you and the performance of your duty, but, gentlemen, be guided by him who is the God of Love and Mercy and before whose tribunal we all one day must answer. The counsel have told you that the counsel for the State have acted unfairly, that at least four times they have violated the laws of evidence and the laws of North Carolina. He rebukes us, he says his Honor rebuked us by deciding agains us, and he then tells you that we are blood-thirsty. Capt. Norment tells you that we did not put on all of our witnesses and therefore we have not been fair and candid with you. Now let us see how it is. I want, if possible, to present this case to you fairly without leaving any stain or any suspicion on any of the counsel, and so I desire, first, to call your attention to the positions taken by these two gentlemen. He tells you that we did not put on the stand all of our witnesses. In that how have we injured the defendant or the counsel? If we had testimony here that was stronger than that we introduced should not the prisoner at the bar and his counsel be grateful to us because we did not put it on the witness stand? If we did not have such testimony here, then we are not to blame, but if we did and failed to put it on, the testimony was still here and they could have used it. So you see they are not affected by it; the interests of the prisoner are not affected by it; the two counsel for the State have done no wrong. Now, is not that so? As reasonable, sensible men, is not that so? If we had testimony here that was stronger than that which we introduced, is not that a favor to the prisoner? Should we be accused of acting in bad faith towards the prisoner because we did not introduce it. Has the prisoner been affected by it? Not at all; because the same rule that applies to the State applies to the defendant, and they could introduce the testimony; so you see the mountain has resolved itself into a very small mole-hill.

My friend, Capt. Norment, tells you that the defendant in this case went to Alma on Tuesday morning, and was there seen by his brother, by Mr. Sellers and by Mr. McGirt. Capt. Norment, as you know when you think of the evidence, is mistaken; the defendant did go to Alma on Wednesday morning, the day after the commission of this crime; Mr. Sellers did see him in the store, Mr. McGirt saw him with his brother on the lumber yard, and his brother went with him up to Laurinburg on the midday train, and the defendant staid at the house of Simeon Conoley Wednesday night, and he said this, "it was a good thing that brother John did come with me to Laurinburg, otherwise I could not come out here to-night." Now, gentlemen of the jury, if that had been Tuesday morning, that would have been accounting for the prisoner; Capt. Norment thought it was Tuesday morning and that the prisoner was accounted for all that day, but the Captain is mistaken, mistaken according to the evidence of the witnesses for the State and for the defendant. It could not be Tuesday because Mr. Sellers and Mr. McGirt both swear to you that it was Wednesday morning about 7 o'clock when they saw him at Alma, and that they never saw him at that place before. There is the positive testimony of two disinterested witnesses and the statement of the defendant himself that it was Wednesday morning that he had been to Alma and brought his brother back with him.

Now, gentlemen, I want to say something to you about the motive in this case; but let me say this, that the counsel for the State does not propose to take up your time by reading a number of law books; you have on the Bench, as the presiding officer of this Court, a gentleman distinguished for his ability, for his integrity, for his impartiality, for his knowledge of the laws of North Carolina, and it is his duty to direct your attention to the law applicable to this case; you are to take no law from counsel, but you are to take it from his Honor on the Bench; so it is useless for us to consume your time reading law books; but we are to be followed, and you are to be told that you are to be guided by the law as laid down by the Court. One other thing in the consideration of this case: when you get into the jury-room you are not to be guided by the statement of counsel as to the evidence; you are not to be guided by their testimony in the case, because none of us have been sworn, but you are to take the testimony as it came from the mouths of the witnesses, and upon that, and that alone, to see whether or not the prisoner at the Bar is guilty.

Gentlemen of the jury, in September of last year, according to the testimony of George Currie, the prisoner came to the house of Simeon Conoley, and, after spending the night, left home with him next morning in the direction of John Wilkes'; early that morning Simeon Conoley went up to the house of John Wilkes, and while talking with him pulled some candy out of his pocket, and the counsel for the defense tells you that he had not eaten any of that candy until he got there where Wilkes was. Wilkes swears to you that there were three large balls, he took two and ate them and gave one to his little son. Sim. Conoley was eating some of the candy with Wilkes, but in a few moments he complained of being sick; they carried him into the house and in a few moments he was prostrated; his head was drawn back, his limbs became rigid. and from the symptoms, as detailed by the witness here, Dr. Prince tells you that the man was poisoned and that it was strychnine. Mark this now, because I think I will make it plain as we go on a little further into the matter. There were three large red balls eaten by Wilkes and his son; there were some little shoes, and the rest of the candy, Wilkes said, looked like sugar plums or something of that kind. When Mrs. Wilkes saw the condition of Sim. Conoley in that house, she threw the candy in the fire, so that evidence has been lost. In about an hour and a-half they got a physician there and gave him an emetic, and the counsel for the defense relies on that to convince you that Simeon Conoley was not poisoned, but that the sudden sickness was caused by something else; well, now, against that supposition on the part of the counsel you have the positive testimony of a distinguised physician, who tells you that all the symptoms indicate strychnine, and that the man would have recovered in an hour and a-half or two hours without an emetic. Now what are you to gather from that? This, that the amount of strychnine which Sim. Conoley ate was not sufficient to kill him, although it came very near doing it. Now, is there any doubt about that? He had not been off anywhere so far as the evidence shows to get any candy or anything poison; he was seen leaving his home that morning in company with his nephew, and he goes to the house alone a few minutes afterwards. What do we hear next? Shortly after that, in the town of Laurinburg, the prisoner went to a drug store and said he wanted some brandy drops. Young Mr. Powell Hill was engaged in sweeping out the store and the prisoner told him that he would go behind the counter and get them, would not trouble him. Is there anything strange in that, when you take into consideration the fact that the prisoner had as good a character at that time as any man in Richmond county, that he was a merchant in the town of Laurinburg; is there anything unnatural in the fact that this boy should say, "all right, Mr. McDougald," and go on with his sweeping? Is it not natural and reasonable? Mr. McDougald went behind the counter and was so long that Powell Hill asked him if he could not get what he wanted, and proposed that he come and get it; he came up and Mr. McDougald says, "I won't take this candy, I will take 5 cents worth out of the show case;" he got the 5 cents worth of candy. A short time afterwards McDougald comes back to the drug store, the druggist, Mr. Everington, is in then and he tells him he wants to buy some brandy drops. Mr. Everington says to him, "well, here are some that have been opened for some time and they may be stale, I will open a new box for you, Mr. McDougald." Thought so much of the prisoner that he did not want to sell him stale bandy drops when he had fresh, but the reply was, "no, give me that box," and it was handed to him and he passed into the rear of the store to the presence of Dr. Prince. He asked him what that white powder was. Upon an examination by Dr. Prince and Mr. Everington, a chemical examination, they swore it was strychnine—powdered strychnine. It is in evidence before you that this drug store had been newly opened; that Mr. Everington had ordered some strychnine, both in crystal and in powdered form; that none of the bottles containing the powdered strychnine had been opened, but the crystal had. There is no doubt about that testimony, is there? so it could not have been accident, there was no powdered strychnine in that drug store that could get into the box. The defendant called for brandy drops out of this box, said to Dr. Prince that he had just heard that Simeon

Conoley, or his tenant I believe he put it, had been poisoned with candy that he had given him—brandy drops—and he wanted this box of candy examined. He said he had a note; Dr. Prince naturally asked him for the note, in order to ascertain something more about it; he had unfortunately left it at home and that is the last that we have heard of the note. As I said before, the candy was examined by Dr. Prince and strychnine was found in the box; every day brandy drops had been sold in the regular course of business in the town of Laurinburg; some had been sold on the Saturday evening previous and no complaint had come to the ears of anybody that any one had even been injuriously affected by it—no suspicion of poison or anything of the kind so far as we have heard.

Just prior to that Mr. Roper came to Mr. McDougald and told him that he understood that Mr. Conoley wanted to insure his life, and he wanted the good influence of Mr. McDougald to get him to insure in his company; he did insure in that company. The insurance agent tells you that he had no conversation with Mr. Conoley about it, that it was all with Mr. McDougald; that Mr. McDougald paid the first premium of $239, and that that amount was to be paid annually on this $5,000 policy. At that time what was the financial condition of the prisoner and the man who now sleeps in a lonely grave near the old church at Antioch? Mr. McDougald was a prosperous merchant according to the testimony of some of the witnesses, worth $4,000 or $5,000, with an exalted character, with the confidence and esteem of all the people around there. Simeon Conoley, prior to that, had given a mortgage on the land that he owned to Mr. Thomson in this county; his sister, Lizzie Conoley, had gone to the prisoner and induced him to take up that mortgage from Mr. Thomson. The prisoner was the owner of it; according to the testimony of McBryde, Sim. Conoley was so poor that he worked out daily for his bread, and that he had seen him repeatedly coming home in the evening with his rations on his shoulder. Now that is the financial condition of the two men. This story of the poison seems to have been hushed up—the attempt, if attempt it was, to poison the deceased for that insurance of his, and nothing more is heard of it for some time afterwards; but on a fateful Tuesday night in April last Sim. Conoley met his fate. The next day George Currie, a colored man, took a buggy and went to Laurinburg after the prisoner to go down to where the dead body of his uncle was lying. Now, gentlemen, it is in testimony before you by every witness that the relations between the prisoner and the deceased were of the most intimate kind; that they met each other joyfully, that they were warm friends. During that ride across the country to the dead body of his uncle we would suppose, naturally, he would be thinking about the murder, and would have been racking his brains to devise some means whereby the man who did it might be brought to justice. Is not that reasonable, is not that what you would have done? But the prisoner at the Bar does not do that; what does he do? He inquires of this negro man if Sim. Conoley had not used 1,500 pounds of lint cotton to make a payment on a little piece of land that he had, and George told him that he had, and the reply that came from the mouth of the prisoner was, "it was my mules and my guano that made that cotton."

Is that all? On the next day we find McDougald at the burying at Antioch. He is talking with Mr. John Currie; he says he is tired and wearied and proposes that they shall go and sit in a buggy. Mr. Currie makes some inquiry about Conoley's property, about his land, and McDougald tells him that that land is his, and he says further, gentlemen of the jury, that Sim. Conoley had used 1,500 pounds of his cotton to pay on the Graham land. Gentlemen of the jury, if you are Scotchmen, if you believe as most of the Scotch do, then you are having evidence of the fact that there is an over-ruling Providence, that there is a Providence which directs our paths, and you can find the hand of Providence in this place, at the burial of Sim. Conoley; the prisoner at the bar tells you, gentlemen of the jury, that he owned the land, that his uncle had taken his cotton to pay for the Graham land; he tells you that Millard Moore had no motive in the world to kill his uncle; thoughtlessly he made that statement, for a week

afterwards we hear that he charges Millard Moore with doing it. The Mighty Being who rules our destinies would not permit this atrocious crime to be unknown forever, and therefore He goes on uncovering the path of the man that did the fatal deed. Wednesday night, gentlemen of the jury, while sitting in the house with the dead body, Wednesday night, the prisoner at the bar made another statement; when his sister mentioned Lum Johnson and said that he might have done it, the prisoner at the bar said, "No, he he could not have done that, he was at his work." There you have the prisoner at the bar exonerating two who were charged with it in the beginning; there he has told the family circle that Lum Johnson, the name that was given at the time the crime was committed, was not the man who did it; and he tells you, gentlemen of the jury, that the day before he left Laurinburg for Wilmington on the morning train, came back on the night train, got left at Maxton, and went to Alma the next morning. Now, gentlemen of the jury, was there no motive in all this? The prisoner at the bar had a mortgage for which he paid money, the deceased was a man in humble circumstances who had nothing; this life insurance policy had been gotten out for the benefit of whom? For the benefit of that one who induced him to advance the amount of that mortgage in order to save the land, Margaret or Lizzie Conoley. As long as Simeon Conoley lived it would be for him to pay that $239 every year, and Simeon Conoley, instead of being grateful for it, was taking his cotton, made with his mules and guano, and making an improper disposition of the proceeds of the farm. If, however, that life policy would be paid, Lizzie Conoley would be able to repay McDougald all the advances he made on the land, all the advances that he had made in order to secure this policy, all the advances he had made to all of those people, and he would have his money and not have to wait until the death of Sim. Conoley.

Well, now, gentlemen of the jury, Sim. Conoley, at the time that the policy was taken out, was in health and strength; his poor old mother, who was here on the witness stand in this Court, says that she is 86 years old and Sim. was 40 years old. It was possible that Sim. Conoley might live 50 years yet. Now, in ascertaining the motive, gentlemen of the jury, you are not trying to ascertain one that would be sufficient in your mind; that is not the rule, because it is likely that you could find no motive sufficient to induce you to take the life of mortal man, that no amount of money, or fame or honor, or anything that this world could give, would be sufficient to cause you to stain your hands with the blood of a fellow being. So it is not to be such a motive as you would deem sufficient, but such a one as the defendant would deem sufficient. What was more important to this man, when he was driving along to Sim. Conoley's, the murdered soul of Conoley winging its way to the Spirit land, or the 1,500 pounds of lint cotton that had passed into the hands of a stranger? Was he thinking of his poor murdered uncle at the grave on Thursday when he was talking to J. H. Currie about his uncle's land, and about the misappropriation of the cotton, about the fact that Millard Moore did not kill him. Gentlemen of the jury, when the memory of man fails, the memory of Him who rules the destinies of men as well as of nations is not at fault, and He imprints marks upon the paths of our lives, unknown, unnoticed, perhaps, but yet well defined, that shall stamp us through all eternity. Ah, here is the motive gathered from the mind of the prisoner less than 48 hours after the commission of this terrible offence. I submit that you cannot have any doubt about that.

Well, now, each of the counsel has made this argument: that we have not identified the cut of the beard; are under great misapprehension as to the height; that most of the witnesses for the State are strangers to the defendant; that some of those who knew him describe him differently from what others do, and that because of this the defendant is not guilty. Well, gentlemen, if we had shown that the prisoner wore the same coat, the same hat, the same sort of whiskers, looked precisely alike, and that every individual person on that pathway from Laurinburg on Tuesday morning to Simeon Conoley's Tuesday night, back to Maxton on Wednesday morning, knew and identified the prisoner, they would have said to you that you must not

consider this testimony because it was manufactured; that it is impossible for such a number of individuals to swear precisely to all the incidents in the same way; that they would look at them in a different way; they would have different recollections, and for various reasons it would be impossible to gather together as many witnesses as the State have done so that they would prove every single circumstance precisely alike. You must believe that testimony, because you know that the Holy Book itself, in some of the most important facts, as told by different witnesses, are told in a different way. Take the last night of the Saviour with his disciples, and you find it related by the disciples each in a different way; they tell you the main fact, but the words of each and the manner of telling it is entirely different by every one who mentions it; and you find all throughout the Holy Book such statements as that. Now, if prophets and apostles would differ as to minor facts, can you expect witnesses now not to differ, and is not that a sufficient reason why this testimony is true?

But one of the counsel says to you that this motive that is urged is unnatural. Well, now, he is endeavoring to get you to come to a conclusion that they think best. If you can not, then you are to do your duty whether it affects them or not.

When the stars first sang in the morning of creation there was a murder committed by a man of high character upon the body of his brother, and why? Because he believed that the Lord favored his brother most, and then a little spirit of jealousy from the old Serpent got into his heart, and he brooded over it until at last he killed his own brother. King David, the man after God's own heart, committed murder, and for a trivial object. Achan, when he was specially commanded by the Almighty to take nothing of the enemy, brought into his tent the wedge of gold, and for this he and his family were stoned. Gehazi, when Naaman came to the mighty prophet in order to be cured, and the prophet would not charge him nor take any of the presents, Gehazi, who was to follow in his footsteps, slipped out and followed Naaman and got a little of the gold. Was that unnatural? and yet we know that this man Gehazi was to stand in the footsteps of his master, and was to hold converse with the Lord, and he gave it all up; the love of gold had come into his heart, and he took the present, and the next thing we find of this man who was to stand so high in the history of the world, we find him covered with leprosy and his three sons. Go out into profane history and you will find where men of high character, distinguished in the walks of life, have committed such crimes as this with a less motive than the prisoner had.

Now, gentlemen, on Tuesday morning, the 21st of April, 1891, the prisoner left his home in Laurinburg and, according to the testimony of all the witnesses, got to Maxton. Mr. Cottingham swears he got off at Maxton; Mr. McNair swears he went on to Alma. I know Dugald McNair, I know he is a good boy, but I think that the same rule that the counsel for the defense asked you to apply to Phillips should apply to this case. They say you must not believe Phillips, because it is a strict rule of the railroad company here that each conductor must go in and register in a book when the train leaves the moment of its leaving, and that there is no record in the railroad office here of any train leaving on that day. It is true, the yard master swears he paid Phillips for working in the shop that day, but says when they are on the road part of a day only, they just go on and give them credit on the shop books for the whole day's work. Not a single one of these witnesses swear that that train did not go out that day; they do not remember anything about it except the record. Is not that so? Every single one of them, the yard master, master mechanic, two operators, I think that is all, tell you that they have no recollection except as they could gather it from the books. And the counsel say you must not believe that testimony because a direct rule of the road has been violated. Now suppose we apply that to my friend Dugald. Let me ask you which the President of a railroad is most interested in, the exact moment of the departure of the train, or the number of the shekels that his agents gather in during the day? What is it that he wants most? Don't you know it is the money?

Don't you know that there is a strict rule about the collection and payment of the fare on these railroads? Why, the witness tells you the prisoner was a good Christian and his friend, therefore he would not charge him. Well, now, gentlemen, in this good Scotch country up here, if every railroad conductor would pass every man who was a good moral Christian man or woman, this Cape Fear and Yadkin Valley Railroad would not get in much money; they would have a pretty hard time if every man who is considered a good Christian is given a free pass; there would not be much chance for a dividend. They say, throw out the testimony of Phillips on that account; we ask you to throw out the testimony of Dugald McNair; we say, that if you take the testimony of Dugald McNair, it does not clear the prisoner; why Alma is two miles and a-quarter from the tank at Maxton; Dugald McNair swears that he reached there at ten minutes past seven on Tuesday morning; Cole swears to you that the tank of the C. F. & Y. V. is in the woods, and that just twenty minutes before the time for the freight train to leave, 8.35, he saw the prisoner sitting at the tank; so he had an hour and five minutes from the time he got off the cars at Alma, two and a-quarter miles from that tank, to get there, did he not? It is established by the time tables of the railroad, and the only trouble about Dugald McNair's testimony is this, that there are other parties at Alma who knew him; John Sellers swore he did not see him that morning. Who did see him? There was Mr. McGirt, he did not see him; he was not seen by his own brother, who saw him on Wednesday and went back with him to Laurinburg. So no human eye was laid upon that man that morning except that of Dugald McNair, and then an hour and fifteen minutes after that you find him at the railroad track.

Now, is there any doubt about Daniel McDougald being on the train that morning? You certainly have no doubt, because all these witnesses identify him; have you any doubt about his arrival at the water-tank? Mr. Cole describes him and he tells you that he told him he was McDougald from Laurinburg. Counsel says that is unnatural, that it is strange, that he would not tell who he was if he was going on to commit a crime. But, gentlemen of the jury, only an hour before that he had been with his acquaintances and friends, and he put himself off the cars at Alma, taking the view that Dugald McNair is correct, and if he did go to Alma Tuesday morning with Dugald McNair, he did it in order to hide his tracks, he did it in order to lose himself at Alma, to put himself in such a position as to be able to show his whereabouts if this thing ever came up against him, to show that he could not have been at both places on the same morning. But we find him back at Maxton at the tank. Now, here is Mr. Cole, a reputable white witness, who was there in the performance of his duty, and he tells you this man told him his name was McDougald. Tom Smith saw him there, describes him with a duster just as McCormick describes him; I understand the counsel to say that Mr. McCormick said he had three bundles wrapped in newspaper; Tom Smith only speaks of the newspaper wrapper, don't swear to the bundles; but that is an immaterial matter, because they were all wrapped in one bundle. Lizzie McCoy, an old colored woman who has known him ever since his boyhood, says she went up and spoke to him and asked him what he was doing there at the tank, and he told her he was going off. Mr. Lockamy tells you, "this gentleman got on the car with me, rode up to Wakulla; did not talk any to me, held his head down part of the time." And here the defendant injects a new witness, and asks you to believe him, Mr. DeVane. He says you must not believe Cole, Tom Smith, Lizzie McCoy, nor Conductor Lockamy, but that you must take the testimo of Mr. DeVane; why, Mr. DeVane, they say, says the man looked taller than the prisoner; that he could not swear, but that it was his impression that it was not he; that his face was a little darker than it is now. Gentlemen of the jury, Mr. DeVane was a stranger to the prisoner; he tells you he saw him that day while the train was running a distance of two miles, probably less than five minutes he was on that train; there was the time taken up in getting on, getting a seat, and the time taken up in getting up, and yet they ask you to believe this gentleman

who does not swear positively about these things, who never saw the prisoner before and never saw him afterwards, until he saw him here, I believe. Well, now, is the impression of a stranger before anyone of us, that he thinks the man on the train was a little taller than the defendant, and that the man on the train was a little darker than the defendant, when he tells you, honest, candid as he is, when he tells you that the prisoner at the Bar has been in jail for some time and would bleach; yet the counsel for the defense gravely asks you to throw aside the testimony of all of these other witnesses and rely upon that alone to try this case—upon an impression, not upon actual evidence.

We hear no more of the prisoner then until he reaches Shandon. Well, now, we find a man going along that road at Shandon with a long duster on, with a blonde moustache, with a black slouch hat, with a black bundle and a long duster, a light-colored duster, going up the railroad towards the Lumberton and Carthage road. The counsel say you must not believe Charlotte Dumas, because it will make the train too long, that is the reason; the house in which she lived, Col. French put it, is two hundred yards from the depot; my friend, Bro. Shaw, put it three or four hundred yards; gentlemen of the jury, there is no evidence before you that the train stopped precisely at the depot, or where it stopped; but they are not to overthrow the testimony of Charlote Dumas, the train could have passed Charlotte Dumas before Mr. McDougald got off the train. She is corroborated by W. C. McPhail, and it has been shown that he is a man of high character, admitted by all the counsel who addressed you that he is a man of high character; he says this man with a long duster, a medium seized man, was going up the road towards Conoley's, and he tells you the man must have passed by Charlotte Dumas' house to get to where he saw him. But it is a white man that has gone so far, according to testimony; identified in the beginning, he answers to the same general description until we find him leaving Shandon. What time did he leave there? It is important that you should remember that; Mr. McPhail swears that it was at 1 o'clock in the evening; Mr. Jeff Cobb saw a man with a long duster, as he came out of his gate about 2 o'clock that evening; the man with the long duster on passed his gate, he had on a black slouch hat, a black looking bundle and a long duster, going up the road. He saw Fannie Meares going in the opposite direction, passing him; saw Henry Smith pass him. Well now, the counsel tell you that Mr. Cobb is a young man of high character, honest and upright and to be perfectly trusted, but they tell you that Mr. Cobb did not see his face, and that this statement of these darkies as to his being painted has all been hatched up since that; it did not come out at the trial before a magistrate and that it has been gotten up, hatched up, manufactured, for the purpose of using it in this Court. Fannie Meares tells you that he was a curious looking man, and as soon as she got back home she told her father about it; but Henry Smith tells you he was up in a cart on the edge of the road or in the road when a painted man passed him; that he had white spots on his knuckles where he was holding his bundles, and as he bowed his head he saw some white spots on the back of his neck; that, the counsel for the defense tells you, is all manufactured, and these witnesses have been tampered with by a foreign corporation, influenced by them, and swore to a lie in order to convict an innocent man.

Jeff Cobb met Henry Smith; don't he tell you that Henry Smith came up and told him about this painted man, and Cobb made some remark to him about it, and Henry Smith said, "why I tell you, Mr. Cobb, that man was painted, because I saw white spots on him?" Now, in order to displace that, you must say that Jeff Cobb wilfully swore to a lie.

[Counsel for the defense interrupts to say, "we do not charge Jeff Cobb with anything; his character is unquestioned."]

I said that you charge that these negroes had been tampered with; therefore, if his character is unquestioned, there can be no alternative but to believe his statement. Now, gentlemen, you will see that it is important to ask the time when this man was at Shandon, and the time the train got there, and the time Jeff. Cobb saw him, and you must remember that this same

good witness, Jeff Cobb, testified to you that there were woods between his house and Shandon, and that on that side of the road on which Mr. McPhail lived, the woods extended nearly up to Mr. McPhail's; so you have got the time, you have got the secret place in which the defendant could disguise himself, and you find him in the public road at the expiration of one hour, disguised, so much so, as to attract the attention of these two colored people, and to draw the attention of Henry Smith to the fact that there were white spots between the knuckles and on the back of his neck. The next witness is Mrs. Humphrey, and she saw this man, she describes him very near as the others, she puts a wig on him with long hair. Does not that corroborate what Henry Smith has said, that he was standing up in the cart, looking down at the prisoner, and when he bowed saw on his neck these white spots?

Now, gentlemen of the jury, the only discrepancy in the testimony so far is this: one describes the duster as light-colored, another as mud-color, another says it was drab, another dove-colored. I expect we would make about the same mistake if we would go down the street and try to tell the color of a piece of goods in a store; there are not many of us here that would have the same opinion of it, unless it was a very marked color, black, white or red. He has on glasses when Mrs. Humphrey sees him, colored glasses she believes. Then we come to the house of one of the best men in Robeson county, admitted to be a man of the very highest character by counsel, and established by the evidence; he reached Mr. Neill Smith's house, and he was standing at his gate talking to Conoley. Gentlemen, you saw that old farmer on the witness stand; you could gather from his hesitation and the deliberation with which he spoke that he is a prudent and a cautious man, and that he will make no statements unless he was firmly convinced of their truth. He says that he saw the man pass there with a long duster buttoned up around him, with this black bundle on a stick; told George the man looked like he was painted, was not a natural looking black, could not have been a natural looking black, because old man Neill Smith told you that he looked like he was painted. He says this man had on a dark looking wig and side-whiskers. We do not offer you this evidence from Fannie Mears as to the wig; we do not offer you this evidence from some person who was not a close observer, not a person of prudence who would be easily deceived, but the same Almighty Providence that directed the prisoner to use the words that he did to John Conoley on the day of the burial, has directed him in this eventful journey to the house of Neill Smith, and there you find the painted man, be-wigged and side-whiskered as he was at the concert in Laurinburg. He tells you this man was about the size of the prisoner; but there is one other statement that he made that it may be is still more important: he tells you that Mr. McDougald was partly raised in that section, and that he was acquainted with him. So now, you have got this painted and be-wigged man on the public highway, at Neill Smith's, about three miles from Shandon; you have established that he is painted, that he had on a wig, that he was partly raised in the neighborhood and was familiar with that country. This strange man, after leaving Neill Smith's, takes a short-cut and he passes by John Conoley at work in the woods, going then on a road that crosses the public road, according to the testimony of the witness, that would lead to Simeon Conoley's. Is not that proof, coming from another witness now, that Mr. Neill Smith is a cautious, prudent, safe, reliable man. Here, between three and four o'clock, some miles from Mr. Smith's, this man is found, not on a public road, but is found on a road leading across the public highway in the direction of Simeon Conoley's. Now, the only statement the counsel has made as affecting the testimony of Conoley is that he is terribly black.

That was about two miles from Mr. Smith's; the next place is Mr. John Wilkes'. You saw Miss Sallie Wilkes on the stand, this young girl who has never been in a court house before, this Scotch lassie, who has proved a good character; she comes and gives you a plain, unvarnished narrative; she tells you this man, disguised with a duster, with dark pants, with a bundle and a black slouch hat, passed her father's house about an hour by sun going in the direction of Simeon Conoley's. So we have McDougald, if you

believe the testimony, at the town of Alma one hour and thirty-five minutes before the train left Maxton; we find him at Maxton at the tank twenty minutes before the time of the departure of the train; we find him telling the road master there that his name was McDougald from Laurinburg; we find an old negro woman, who has known him all his life, speaking to him and talking to him as Daniel McDougald. We find him on that train in company with Mr. Lockamy, paying his way to Shandon. We find then that Mr. Lockamy is out of that car until it passed Shandon engaged in the duties of his position, and we find a man answering to his description going by Charlotte Dumas' house; we find him passing in sight of Mr. McPhail at the depot, on the Lumberton road; we find that there is a piece of woods on the other side of which he is next seen, and then he is a painted man, with white spots on his hands and neck; a short distance after that he is seen by an old neighbor, who testifies that Daniel McDougald was familiar with that section of the country; has on a wig and side whiskers; and then the testimony of Conoly and Miss Sallie Wilkes, and you have come within a quarter of a mile of the place where the murder was committed.

On the next day the body was discovered. But I want to call your attention to one fact: this defendant had written a letter in which he closes with this statement, "You know you can fool them to death." That was the defendant's estimate of his uncle Sim, his aunt Lizzie and his grandmother, that you would fool them to death. When Sim. Conoley was killed, one of the witnesses testified that his aunt Lizzie made some inquiry about Simeon's return, and that Edwin said, "oh, never mind, they are shooting partridges out there in the field," and they went to sleep and thought no more about it. Now don't you think they were easily fooled, if they thought that Sim. and the stranger were out there at that hour of the night shooting partridges with a pistol? Well, now, Tuesday night Sim. Conoley was killed and left lying in the field, and the next place where these clothes appear was at Campbell's Bridge, about thirteen miles from where the dead man was. What occurred now between the time of the death of Sim. Conoley and the time those clothes were discovered by that negro going to his work the next morning, lying near the water at Campbell's Bridge? Through all the lonely hours where was the man who committed the offence? Lurking in the shadow or fleeing from the moonshine? His counsel told you that there are numerous swamps on his way and that he would have stopped and washed away the tell-tale marks. The heart of a man must be hardened, harder than that of a brute, if he could deliberately take the life of his own uncle, and then go deliberately into the darkest recesses of some swamp and, with no eye upon him but that of his God, stop to wash off the stains. Gentlemen, it required an amount of courage that few men have. You may say it is superstition; you may say that this is talk about the old Scotch Banshee; gentlemen it is not superstition, but it is a fact that, however bold we may be, if we have committed a sin, in the dark hours of the night, when no human eye is upon us, then is the time that it tortures us most; then is the time that we try the hardest to get away from the clutches of the evil one. Gentlemen, it is not unreasonable to suppose that this man McDougald hurriedly passed along that road on that moon-light night, passed through the swamps, passed the fields, until he came near that bridge and not very far from the saw mill; there he concluded that he would remove these clothes, he would destroy them, and he would wash away the black paint. Did he do it? Just about daylight this negro man, who came up there, saw those clothes and stopped and looked at them. Now where was the prisoner? Do you think he was sitting there by that river-side in calm security in the sweet peace of innocence, or was he listening and trembling with fear that some human footstep would pass that way and see him before he completed his disguise, and if he heard a step would he not flee? Did he not flee? Did the man who left those clothes there leave with ample time and deliberate purpose? Why was it that the clothes were partly in the stream and partly out? Why was it that the little looking-glass was found shattered there by the first man that comes that way?

The counsel said a good deal about Gillespie, the negro of bad character,

who lives three-quarters of a mile from Campbell's bridge; they tell you that the State has abandoned Edgar. Gentleman of the jury, no one of the counsel for the State has ever asked you to pass a verdict against the prisoner upon the unsupported testimony of Edgar Gillespie; but we say to you this, that a bad man may sometimes tell the truth, that because his character is bad it does not necessarily follow that everything he says is false. When a statement of his is proved and corroborated by a man of good character, then you are to take it. Now that is the position of the State; that is all we ask. He tells Hector Gilchrist, before Mr. McDougald had ever been suspected, that it was Mr. Daniel McDougald who came there and got the water and washed his face. He tells Mr. Hester some weeks after a different statement. Let us think about this. Edgar Gillespie, a negro of bad character, now don't you think he would be apt to get himself into trouble if he got it over that country that Mr. Daniel McDougald was at his house before daylight washing paint off of his face? Is it probable that he would have told it to Mr. Hester, a firm friend of the prisoner, and tell it to his employer, another firm friend of the prisoner, Mr. McKinnon? Put these two circumstances together; there was no reason in the world for him to tell a story. First he tells Hector Gilchrist; after it is discovered or charged that Mr. McDougald is the man, then Edgar Gillespie shuts his mouth, because he has been told to do it, and rather than connect this gentlemen of high character with it he tells Mr. Hester he did not know him.

Now, gentlemen, I think the testimony discloses a similar state on the part of the prisoner. He was carried to Lumberton jail upon his being brought back from Oregon; his intimate friend and old time partner, Phillips, goes in there to see him, expresses sympathy with him, and sorrow for him, and asks him some questions about it, and the reply of the prisoner is, "I don't want to talk about it; my counsel has told me not to do so." He does not say to his old-time friend, "I am innocent." Oh no, but that he don't care to talk about it, his counsel has cautioned him not to. Edgar Gillespie says he received a similar caution and he obeyed directions.

But that is the end that morning until we find him at Maxton, and there the conductor tells you that Mr. McDougald was crouching down against the side of the depot on the platform; that is his expression;—that he shook hands with him and that he did not notice any black on his face. Well, now, that may all be true, and all this is true so far as is stated by the conductor; he would not tell anything wrong; and the statement of the other witnesses may be true; two of them swore that they did see black, some of it under his right eye and in the creases of his neck; one of them says, "he attracted me on account of his seedy appearance." The conductor tells you on the other hand that he did not see anything; here you have got positive testimony against negative testimony. If you and I were out together walking under an apple tree, and you would look up and see an apple in it and would come in here and swear that you did, and I would get on the stand and swear that I was with you and I saw the apple tree but no apple, would that disprove your statement? One of the counsel, the last I believe, tries to make you believe that Mr. Powers examined him closely; that Mr. Powers' head was within a foot of his face. Well, I never heard of that testimony before, and my friend has made a mistake. He was careful of his personal appearance, and neat, so testify all of the witnesses, and Mr. Herring, who evidently knew him, because he lived there at Laurinburg, says he was attracted on account of his seedy appearance, that caused him to look closer and he saw these discolorations. Mr. Sellers, though, tells you he did not see any; that does not dispose of the testimony of Mr. Herring, because Mr. Sellers told you he just came into the store and spoke to him and went on. Then he goes down to this brother's. Well, now, gentlemen, is it not reasonable to presume, that when the defendant got there, he washed at his brother's house? Why of course he did. When he goes back, he meets Mr. McGirt and there are no stains on him. Now, you can find that all of the witnesses in regard to this black on his face, every single one of them, after he left

Campbell's Bridge have told the truth and the whole truth, that the prisoner was blacked as they describe him, because it is a positive affirmative statement on the part of two that he had spots, and simply negative statement on the part of the others.

Then he goes from Alma with his brother up to Laurinburg. If there should be any mistake or any doubt in your minds as to whether or not he has been identified and traced so far, let me call your attention to what occurred at Laurinburg. Remember this is Wednesday; according to the theory of the counsel for the defense the prisoner had not seen Mr. Conoly, he tells you through Mr. Robbins that he had received a note that his tenant was dead. Away back in the testimony you hear sometimes something about his uncle Sim. wanting to insure, about his uncle Sim. having executed a mortgage to Mr. Thomson, now you find that he is Mr. McDougald's tenant.

[At this point the recess for dinner was taken, after which Col. Rowland continued his argument.]

May it please your Honor and Gentlemen of the Jury: I have already talked to you longer than I expected to do when I commenced, and I promise you to be as brief as I can. Now I desire to call your attention to what was done by the prisoner at Laurinburg on the Wednesday after the commission of this murder. We first find him at the store, and the first conversation he had with Mr. Robbins he gave him a minute account of the murder; he tells you that the murderer placed himself on the path leading from the direction of Sim. Conoley's house, thinking that Conoley would pass that way, but that afternoon he supposed that he did not; then he describes where the murderer went from that point up to the rear of the stable, back of the garden, around on the other side of the house to the fence and there escaped. Now I told you this morning that I believed there was an overruling Providence that directed our ways, unnoticed and unknown to us perhaps, at all times, and imprints upon our lives marks which our companions and associates may recognize. Is not it so? The prisoner tells you that he went to Wilmington on Tuesday morning; Tuesday night he came back to Maxton, remained there all night, went to Alma Wednesday morning, with his brother back to Laurinburg, and when he got there he learned of the death of his tenant. According to his own statement he had not been there, and yet, gentlemen of the jury, he tells you how the murderer took his position, went from the murdered body back to the house and back from the house to the murdered body. How was it, if the prisoner was not there, had not been to the scene of the murder, how was it that he could describe it in the way he did? He said he had received a note, but, gentlemen, do you believe that that note contained a full description of the murder, of the place and these matters that would hardly occur to any but an eye-witness? Do you think that this is reasonable? He told Mr. McMillan the same thing, gentlemen of the jury. Now this is Wednesday. I ask you as practical, thinking men, can you reconcile this conversation with his innocence? Take from this case all the evidence offered by the State except these two witnesses, and how then can you say the defendant is innocent?

On Wednesday afternoon, as I said to you, he goes with George Currie to the Conoley place; he remans there that night; tells Miss Lizzie Conoley that it would be hard to find any clue to the murder. This is a horrid deed committed upon the person of his uncle, and yet the first statement you find from him, and all the other statements you find him make, is that it would be hard to find any clue to the murder. He makes the same statement that he was in Wilmington on Tuesday, went down on the freight train in the morning, came back on the train that night, and we have shown you by the officials on those trains that Mr. McDougald was not on further than Alma. Now he must have been somewhere, from there until the next day. Then on Thursday we find him at the burial and from there he goes home. He says there that it would be hard to find any clue to the murderer. On Friday we find him again on the train with James McBryde, his special friend, a man who earnestly intends, as a citizen of the town, to discover who committed this crime. Did not he frankly tell Mr. McDougald all that he had heard when

he came back to go and get the clothes; that Mr. Hamilton McMillan was endeavoring to get up some evidence; and the defendant said, "Can a man be convicted in this State on circumstantial evidence?" Not only did he get off of one train at Wilmington and get on the other, but, on Saturday morning, he went to the mill and got the clothes and showed them to McKinnon. He was on the road going in the direction of his home at Laurinburg; not as Capt Norment endeavored to impress upon you, that he was going in the direction of Conoley's and that the clothes were lost that night. This is Saturday morning and he is going towards Laurinburg. James McBryde was there on the Sunday following, and the next day had a talk with him and told him that Mr. McMillan had said that there was an impression that the man that got on the train at the tank must be the guilty person. He did not exhibit the clothes to Mr. McBryde, but tells him his father has some clue that he won't reveal. You never hear of those clothes again, notwithstanding the fact that the defendant is there, surrounded by his friends and associates, men who, according to the statement of Col. French, were willing to risk their lives in his defense; yet you have no account of any exhibition of the clothing until next Wednesday. Saturday, Sunday, Monday and Tuesday the clothes are kept at Laurinburg. Tuesday he starts back to John Conoley's and takes the clothing; he is met that morning by Mr. Hodgin, a reputable citizen of that county and one who was anxious to find out the criminal. Mr. Hodgin asks him about the clothes, but he does not show them to him. That blacksmith asks him about the clothes, but he does not show then to him. Now, this was before there had been one thing against Mr. McDougald; the cry then was against Moore and Kelly, they were the men who were suspected; he goes on. D. E. McBryde, a Justice of the Peace, and his uncle, Mr. Conoley, had sworn out a warrant against Millard Moore; Mr. McBryde tells him that there is an impression abroad that the man who got on the train at the tank must have been the guilty person, and says, "they say that you tried to poison your uncle last fall." Does he make any answer to the charge of poisoning? None. To the other he says, "I can prove my whereabouts; if you have no further use for me I will go home." He did not go from there home; he went from there, if you are to believe the witnesses, and he met John Conoley, and he and John Conoley went to the home of his grandmother, and they returned about 9 o'clock that night, and that night the clothing were stolen. Mark you, it had been impressed upon the prisoner the importance of preserving those clothing; he had been told by at least two of his friends that the clothing might be important testimony hereafter; and yet he goes to John Conoley's, who was so frightened, according to the statement, that he takes unusual precautions to shut himself up in his house, and Mr. McDougald at the same time leaves those important clothing out in the road-cart all night. John Conoley, notwithstanding his statement, notwithstanding the fact that they had placed this screw over the latch of the door so that nobody could possibly come in, says in reply to the inquiry of his son, should he carry those clothing in, that "nobody has ever stolen anything around here;" so for the first time in the history of the place a robber has been to it. Now, why on this particular night? Why was it, when the prisoner had not been to John Conoley's for seven or eight years, why was it that he went there that night; from there to his grandmother's and then back, and spent the night? Next morning he was notified of the loss of the clothing. Does he go in search for them? Neal Conoley tells you that two of the boys searched around there through the woods, but that Daniel McDougald takes the road-cart and horse and goes home, accompanied, I believe, by one of the boys a part of the way. The counsel would make the impression on you that he was so frightened that, like in the days of the Lowries, he took a different road.

There is no particle of evidence of that. The evidence is that this young Conoley went with him a part of the way, and he meets Mr. Purcell and Dr. Gilbert and one or two others, and he tells them that he has been unfortunate in losing the clothes down at his uncle's. You can not change their testimony. He goes on to Laurinburg. There has been a great deal said in this case about lynching, yet on that Thursday we have the first intimation

of lynching and it comes from the hands of the defense. A friend swears that he got a note asking him to come up with a picked crowd of fifty men; that Millard Moore would be at McBryde's that night and they would be met; the picked crowd of fifty men did not come, and that perhaps has saved the life of Millard Moore. On the next morning we find the defendant on the train going to Charlotte. He tells D. B. Livingston, not that the clothes were lost at Conoley's, not a word of that comes from his lips that day, he tells him they are in the office of his attorney, John D. Shaw, Jr., and will be at the trial the next day down in Robeson. The counsel say that is a mistake, that he did not say they were in John D. Shaw's office; but there is no doubt about his statement that they would be produced the next day; the prisoner knew that the clothing had been stolen, knew that they would not be at the trial of Millard Moore the next day, and yet he tells Livingston that the clothes would be there; that he had left them, and Mr Livingston tells you, as confirmatory of his testimony, that he told two gentlemen in Laurinburg what Mr. McDougald had said.

Now, gentlemen, these warrants have been going out against white men, you have not heard anything yet about a painted man; I mean the defendant, so far as we know, had heard nothing at all so far about a painted man; but he tells the Rev. Mr. Lyon on this authority that it was a white man disguised who murdered his uncle, and the power of the law in Robeson county at the very time was being brought to bear on white men who were suspected of this crime and were charged with it. Now I ask you to remember this, that at that trial going on at Mill Prong three white men were before the Court, not disguised, not charged with being disguised, but charged with being either the murderers or accessories to it, and the evidence was directed solely to ascertain whether or not these three white men or either one of them did it. The question of blacking was a secondary matter, the attention of the Court had not been brought to it; it was white men that they were investigating. Millard Moore and his associates were discharged on Friday morning; no evidence against them; so that if the purpose of the defendant had been carried out the probability is that one or two more of those men would have been sent to their last resting place on the preceding day. He tells you that Millard Moore is not guilty. He told Mr. John A. Currie that the trouble between Millard Moore and his uncle had all been settled, and there was no reason for charging Millard Moore with it, yet he says afterwards differently; he tells his aunt Lizzie that Lum Johnson was not guilty because he was at his work; tells you further that it was a painted white man who committed this murder.

Flight, gentlemen, is a strong circumstance in this case. Now, what reason does he give for his flight? Not that there was any attempt to lynch him; not that any charge had been made against him, except what came from D. E. McBryde as he says in a joking way; but the indignation of the people was aroused against whoever committed this deed. Mr. Livingston told him there on the train that he would be one of five men to lynch the man who did it, not knowing that McDougald had any connection with it at all. He told McRae on the return trip from Oregon that he left the State because he did not want to have any trouble with Millard Moore, any lawsuit with Millard Moore; Millard would try to fix it on him and he did not want to have any trouble. The prisoner, notwithstanding his excellent character, in good financial condition, surrounded by his numerous friends, gives up home, gives up his friends and relatives, gives up all that is near and dear to him before he would get into a suit with this poor, miserable Millard Moore, who is described to you in this case as a jail-bird and a man of bad character. What an unnatural thing that this man of high character should flee the State and leave all behind him in order to avoid a law suit with Millard Moore?

The counsel for the defense say the concert has passed out of this case; that you must not regard that or pay any attention to it, because they have shown that Mr. Phillips had on the duster, not the defendant. The concert was introduced into this case simply to show you how perfectly this defendant could disguise himself, and the defense has made out the case even

stronger than the State, because we had witnesses on the stand who believed that he wore the duster on that night and who said they could not recognize him; those friends that night who saw him in the bright glare of the light, who knew him so well and had known him so long, were so perfectly ignorant as to which was he that, according to the statement of the counsel for the defense, they took him for some one else; the prisoner had disguised his face and his walk and his appearance so completely that none of them could identify him, and the man that they supposed to be the defendant was a different man. Mr. Rich, his familiar friend, says he knew who it was; Mr. Rich is mistaken in that according to Mr. Phillips' testimony. So, if you take the testimony of all the witnesses, he was so disguised that they did not recognize him. If the prisoner was able to so completely disguise himself, when he attempted it again how could one in the flickering moonlight, with only a momentary look, see through that disguise and identify the man? If he disguised his voice so at the concert, not only in his declamation but in his singing, so it could not be recognized, why could he not disguise it when he uttered a simple "hello" at the gate of Sim. Conoley?

Gentlemen of the jury, when the old grandmother was put on the stand a feeling of reverence came over all right-minded people in this court house; to see that poor old woman, 30 years stricken with palsy, 12 years on her bed, to see how patiently she had borne it, and how amid her suffering and trouble she shamed us who had been more fortunate by her patience and by her humble christian faith, it was almost a feeling of reverence with which we looked upon her. The counsel say that they hope we will not attack Mrs. Conoley. Far be it from me to say one word against the honesty of her evidence, or her belief in the truth of the statements she made on this witness stand; that old mother is sacred from the attack of any human being who has within his bosom an honest heart. Soon, in the way of nature, she will be with Him who has been her Helper through many years, and I believe that she will find that rest that cometh alone from God. Yet, gentlemen, while I believe this honestly and truly, I as honestly and truly think that Mrs. Effie Conoley must be mistaken. To place her in the house where she said she was and where she saw the party walking by slowly in the moonlight—you have her sitting in the house by the fire, the murderer out in the moonlight and the glare of the firelight between them. Now, you know how that is, you know that in a lighted room you cannot see well out; she says he was taller than Simeon Conoley. Gentlemen of the jury, this overruling Providence, which I alluded to before, in inscrutable wisdom, did something that night that should leave its mark upon the prisoner. All the witnesses that testified about that concert said that Daniel McDougald, in acting the part of that old negro, walked across the floor with a hobble. Old Mrs. Conoley swears to you that the disguised man who walked across her yard with Simeon Conoley hobbled. Is not that so? Can there be any doubt about that, gentlemen of the jury? His partner said he had on the duster at the concert; witnesses testified to you that they thought the man who had on the duster was the prisoner at the Bar. Was the prisoner in much danger then when he got away in the country with his duster on, when he could disguise himself so completely without it that his intimate friends could not tell who it was? And, gentlemen, if there should come up any trouble hereafter, could it not be established that the man who wore the duster was another man at the concert? Is not that so? When all this testimony comes to you, circumstance after circumstance, following up the acts of McDougald, his statement that he went to Wilmington on Tuesday; that Millard Moore had no reason to commit the deed; that Lum Johnson was at his work; that it was a white man disguised; then the loss of the clothing; his statement to two or three of the witnesses, that it would be hard for them to find any clue to it, and lastly his flight. Now, gentlemen of the jury, what have you got to unsettle your minds as to these facts? That the duster was a white or drab color? The testimony of his grandmother that the man who passed through that yard was taller than Sim. Conoley, and the counsel who last addressed you says the defendant has proven that he is not guilty; he closes a five-hour's speech to you with the statement that the defendant is not guilty. If

the defendant has proved that I am glad of it. It is for you to say. Since he made that statement I have been thinking, and I can find no point in this evidence, no particle of it, which shows that the defendant is innocent. We have put such testimony on as we think must convince you beyond a reasonable doubt that the defendant is guilty. The counsel for the defense say we ought to have put more on. We did what we believed was right; the witnesses were here, and sworn by the counsel of State, the counsel for the defense could have put them on, they were here in this Court; or if our witnesses had been tampered with they could have shown it. The last counsel gravely asks you to acquit this prisoner, mainly because from the fact that he is not satisfied with the course that the counsel for the State have pursued in this case. Gentlemen of the jury, I do not believe that you will allow such expressions, falling from the lips of counsel, to teach you. Soon the prisoner will have nothing between him and his Maker except you, and you, under the oath which you have taken, are to render a solemn verdict according to the command of the mighty Being, that "whosoever sheddeth blood, by the hand of man shall his blood be shed."

God forbid that I should direct you to do anything but what is your solemn duty in this matter. Vengeance, if it must come to the murderer of Simeon Conoley, will come from him who hath declared "vengeance is mine, saith the Lord." We have naught to do with that; it matters not what the verdict is to be, before that awful tribunal, at the last great day, whoever committed this deed must answer for it. Now, gentlemen, what more can I say to you? You come from a race noted for honesty and courage, from a people who heard the thunder of the Almighty in the rushing clouds around the granite peaks of old Caledonia, from a race of people who saw his smile and his Pentecost in the sunshine and the flowers, and whatever you do you will do honestly, justly, fairly and impartially; like your ancestors you shall ask Him to guide you in this matter before you. I will join with your verdict; if the defendant has explained these circumstances, if he has established his innocence, as the counsel say, let him go free; but, gentlemen of the jury, in consideration of the evidence, the testimony, the statements of counsel, with all the testimony as introduced by the witnesses, may God in his wisdom and mercy aid and help you to decide between the prisoner and the State of North Carolina.

JOHN G. SHAW—FOR THE DEFENSE.

May it please Your Honor and Gentlemen of the Jury:

JOHN G. SHAW, ESQ., of Fayetteville, N. C.

I am amazed, yes, gentlemen of the jury, I am almost dumfounded at the scenes which have been witnessed in this court room for the last ten days. It is enough to bring wonder and amazement to the mind of every man when we look around us, as we have for the last ten days, and see gathered together men from all parts of North Carolina, representing, I might say almost every nationality, almost every creed, almost every color, and both sexes, come here at the command of the State of North Carolina and at the bidding of the New York Mutual Life Insurance Company, and for what? To weave a net and weld a chain, to bring down to an untimely and unmerited grave the prisoner at the Bar. Some of you, gentlemen of the jury, have passed the meridian of life; some of you have witnessed many scenes in court rooms; some of you are younger and have not had the experiences of the others; but though you may have lived three score years and ten, and though you may live three score years and ten longer, I submit to you that the time has never been, and the time, I hope, will never come again, when the court-rooms of North Carolina will be invaded by a miserable foreign corporation, blood-

thirsty in its designs, as has been the principal prosecutor in this cause. Not content, gentlemen of the jury, with one of the ablest prosecutors in North Carolina, and I submit that there is no abler prosecuting attorney in the whole State than the Solicitor for this District, that Company, bloodthirsty in its designs, comes into this court-room with its own attorney and endeavors to stifle and trouble the minds of the jury by persuasion and almost by force. The part that I have been assigned in this cause is a hard one to fill. I am following in the wake of one of the greatest men in North Carolina, a man who not only stands at the very head of the legal profession in the State, but a man who has stood at the head of the North Carolina delegation in Congress, and whose voice has rung time and again through its halls. Following in his wake I feel small and insignificant, but I am glad to know that the gentleman, for whom I have the most profound respect, in his argument before this jury, has argued from a standpoint of justice and fairness, such as some at least of the other counsel have not done.

There is no counsel in this case, gentlemen of the jury, with whom I am not on the very best terms; but I do say that when counsel come into this Court and show as much spirit and as much feeling as did one of the counsel, and the very counsel representing that Insurance Company, it is enough to make any juror or any respectable man turn with disgust from any such mode of prosecution. Gentlemen of the jury, there sits a man charged with a terrible crime, and only through the mouths of his counsel can he say one word; and I marked him yesterday, when, with flashing eye and denunciatory voice, the counsel almost rushed upon him, if possible to make him show at least some feeling or some guilt upon his countenance, and I never in my life have felt any more righteous indignation than I did when an assault, as it were, was made upon the man under the ban of the law. But it is done, the arm that held the blade for the Insurance Company has struck his blow, and I am glad to see that twelve men still sit here, patiently listening to what the prisoner has to say in his own defense. Gentlemen of the jury, probably one of the ablest lawyers North Carolina boasts to-day laid down the principle of law upon which this prosecution is based, and it is one of the most fallacious and most illgrounded principles that I have ever heard. He comes into this Court and, after calling forth from his soul pity at the condition of the prisoner, he implores him to lift the burden there is upon him. Ah, gentlemen of the jury, these were the words of the State of North Carolina. Has it come to the time when our old mother can say to one of her sons, "you are guilty, prove your innocence?" I do hope to God that the day may never come in the State of North Carolina when such will be the case. Ah, but, gentlemen of the jury, they rushed at him and declared, "why don't you tell where you were?" And then and there the Judge presiding tells him to stop, "Stop, you are overstepping the bounds of the law, it is for you to prove where he was and not for him." The State of North Carolina cannot shift the responsibility upon the defense in this case. It has made its allegations and it must prove the facts. We say to you, gentlemen of the jury, that they have failed, miserably failed.

Now, gentlemen of the jury, the prosecution has laid down its theory; one of the most important points in that theory is this, that on the 21st day of April in the present year the prisoner at the bar got off the train of the Carolina Central Railroad at Maxton; mark you, that he got off at Maxton; they have endeavored to trace him from the depot at Maxton to the water tank of the C. F. & Y. V. R. R. Well now, I say to you, and I believe his Honor will so charge you, if they have urged in proof, before the defendant has answered, that the prisoner at the bar did get off at Maxton, it does not lie in their mouth to say that he could have gone to Alma and walked back to Maxton. There is an old military adage—and it is as old as it is true—which says that it is bad policy to change front in the presence of the enemy. It does not lie in their mouth, gentlemen of the jury, after they have put Cottingham and McCormick on the stand here to swear solemnly that they will tell the truth, and they have said that he stopped at Maxton, to say that there was time for him to have gone on to Alma and get back to that water tank in time to have taken the freight on the C. F. & Y. V.

Right there, gentlemen of the jury, we have broken their chains asunder; we have thrown the pieces in different directions. But they say that Mr. Phillips—and I am not going to say much about Mr. Phillips, very little need to be said about him—they say that Mr. Phillips saw him leave the very day that Mr. Lockamy says he left. Where is the testimony of Mr. Phillips to-day, gentlemen? It is reposing quietly, it is resting in the same place that marks perjured Edgar Gillespie. I submit to you that they are bound to prove that it was none other than the prisoner himself, and we have put to shame their strongest man, the very man who swears it; that man comes back on the stand, gentlemen of the jury, and says that he does not know what day it was. Oh, but one of the counsel says that there is an old colored woman whose testimony we have handled gingerly; the Insurance Company say that this old colored woman, who had known Dan. McDougald so well, came along there and said, "Danny, where are you going?" Gentlemen of the jury, the old colored woman did not say that; the Insurance Company got softer in its words than did the witness. The word "Dannie" was not used. Now they say that we handle her testimony mighty gingerly. I say to you that they handle Mr. Philips' testimony mighty gingerly, exceedingly gingerly. You lay aside the testimony of Mr. Phillips, the only other person that saw him, and where is the testimony of the old woman gone to? But they say, gentlemen of the jury, with all the ingenuity, with all the array of counsel that this defendant has, that if that old woman's character could have been attacked, it would certainly have been done. Well, I doubt very much whether there is a single man in this court room, except possibly the insurance agent, that ever heard of the old woman before. I have inquired of numbers of people, "did you ever hear of her?" "Never heard of her before in my life." I have the right to argue to you from testimony that the testimony of this old woman there at the water tank is nothing but the production of that man Daniels' imagination and money.

I understand, gentlemen, that that important personage, of whom you have heard so much, Mr. Daniels, has been here, or some one of his agents, that he has been within this court-room, or within sight of it during this trial; if he has I venture to say that he has taken his flight before this time, and I am glad to know, gentlemen of the jury, that we are reported here in this court-room by one who will publish not only to the people of North Carolina, but to the world, the vice and the villainy of this Insurance Company, so that the people may be no longer gulled and swindled by it.

Now, gentlemen of the jury, I will just jump from crag to crag and peak to peak in the evidence. I do not propose to recapitulate three-fourths of the evidence or even a fourth of it. But the last counsel was just a little mistaken with regard to the evidence. At one place he says this man was seen getting off the train at Shandon. My respected friend is mistaken with regard to the testimony. There is no living man or woman, gentlemen of the jury, that has come upon that stand and sworn that this man with a duster on ever got off that train at Shandon. It is only a presumption, gentlemen of the jury, only a presumption, that after the train had arrived, a few minutes after it arrived, that a man passed by the house of this old woman, Charlotte Dumas, wearing a duster and carrying something upon his back. Now, you older men, who have had more experience in life than I have, I want to ask you if in your experience you know of but one thing that can change its color as often as that duster? I believe that there is a certain species of lizzard that has reflected upon it whatever it is crawling on, and that, gentlemen of the jury, is the only thing in the world that this duster can be compared to. Mr. Phillips says it was a mud-colored duster, the next man said it was white, another that it was straw colored, and a dozen different colors were given. The man that they locate as leaving Shandon and passing by this old woman's house has not got the same sort of a duster on as the man that they say was on the water-tank on that particular morning. Well then, if that is so, if they have not proved that the man had the same kind of a duster, was carrying the same package, what connection has the one with the other at all? I submit to you, gentlemen of the jury, there is not the slightest.

Much has been said to you about the next witness, and I am going to be very brief in regard to this testimony; I am not going to talk to you as long as the rest have done. The next witness, gentlemen of the jury, saw the blackest man that he ever laid eyes on. Many of you observed that man upon the stand, and he tells you that the party that he saw was so black that he glittered, actually glittered; well that is the man that has sworn to you, that when this party passed along with the duster and package on his shoulder, that he discovered white spots upon his hand and the back of his neck. Right in the same road, within a hundred yards of the same place, a woman meets him, Mrs. Humphrey; she describes him as being a shining black man, but she did not see any white on his hands nor on the back of his neck; but she does say, and I want you to mark the contradiction there is between one witness and the other, she does say that this man had long hair and that he was carrying some sort of a pack across his shoulder. Well, now, here; if a man had as long hair as Mrs. Humphrey describes that he did, coming away down on his neck, I ask you, in the name of Heaven, how in the world could that colored man have seen any white on the back of his neck; almost identically in the same place, not one hundred yards difference between where the two parties were, nevertheless one describes him as having hair away down on his neck, even to his shoulders, and yet the next witness says that he saw the back of his neck and there were white spots on it; well, now, I say to you, gentlemen of the jury, that there is a serious conflict of testimony here. It is in evidence that these same two witnesses, Mrs. Humphrey and that colored man, I have forgotten his name, testified once before in regard to this man that passed up that road; it was at Mill Prong, but I will have you to bear in mind that, when a man or a woman places his or her hand on the Word of God and takes a solemn oath, it matters not in what county or State, it matters not in what nation or clime, it will be just as binding in one place as in another; my friend Mr. Neal, who is representing the Insurance Company, says that Mr. Shaw was over there trying to fix this crime upon Millard Moore and upon the man Kelly. Now, gentlemen of the jury, what under Heaven did Mr. Shaw know about the charge against Mr. McDougald at that time? If there had been any testimony at that trial that would have shown that there were white spots upon the hands and neck of that man, was it not white men they were trying on that day, and would not Mr. Shaw have done everything in his power to have shown that this was a white man disguised? But with all his ingenuity he was not able to elicit anything from those witnesses that the man that passed up the road on that day was a white man. But after our friend Daniels—I have never seen him—representing one of the richest corporations that there is to-day in America—and just there I am reminded of one thing: My friend, Mr. Neal, has spoken of the prisoner being haunted by conscience, that he was driven over the Rocky Mountains into the Pacific Slope, and he was almost ready to plunge into the Pacific Ocean and go clear across, conscience was driving him from one side of the continent to the other. Well, I am surprised, gentlemen of the jury, that a man that is representing as soulless a corporation as he is can talk about conscience; for one of the big corporations, who are sucking the very life blood out of the people, they are the very last ones that ought to say one word about conscience; when Mr. Neal speaks to you it is not Mr. Neal speaking, just as when I speak, it is not I speaking, but Daniel McDougald; so when Mr. Neal is speaking, it is not Mr. Neal, it is the Mutual Life Insurance Company.

One of the evils of this day and generation is that the rich moneyed corporations are trying to suck the life-blood of our country. Why, gentlemen of the jury, the spectacle is appalling, when you come to consider that, as I remarked a minute ago, we are reduced to the necessity of having a prosecuting attorney representing companies from New York State in our midst; it is an appalling one and ought to bring horror and consternation to every good man.

Well, gentlemen of the jury, it has been argued to you, and I say it has been argued fairly, that the State has not acted towards this jury as it ought to have done. It is in testimony, that on the morning the man passed up

on the freight of the C. F. & Y. V. Railway, that there were only two other passengers aboard that train; now you heard that in testimony—Capt. Lockamy testified to it; both of those men were summoned by the State to this trial; now mark it, they were both called to the witness stand and sworn, and they were both discharged by the State of North Carolina. Mr. DeVane testified for whom? We had to send to Robeson to get him after the State discharged him; the other was Mr. J. C. Murchison, master of trains on the C. F. & Y. V.; he passed so far away that we could not get him back here. Is that fair, gentlemen of the jury? Is it fair for the State to bring here the only two men who were on board the train that morning, and, after having them sworn in as State's witnesses, to discharge them and let them go home. You heard what Mr. DeVane swore to; you heard him swear in language plain and not easily misunderstood that the man who was on board that train on that morning was a taller man than the prisoner at the Bar. The State knew that that was what Mr. DeVane would say, and possibly they knew that is what Mr. Murchison would swear to if they had put him up, but Mr. Murchison got so far away from us that we could not get him back when we found the State had discharged him.

Now, gentlemen of the jury, listen here a little further: As I said before, I only intend to touch the testimony here and there; let us go out to the scene of the murder that has been so graphically described. I discovered during Col. Rowland's remarks that there was a death-like stillness over the entire audience; there was the old man answering a call of charity by a stranger, whom the counsel says was Mr. McDougald, and the counsel pictured the scene, the man standing over him and shooting him like a dog. All that is very good so far as it goes, but that is not the question we are discussing. It is not denied that there has been a fiendish murder committed, but all the eloquence and pathos of the counsel in describing that murder don't throw one particle of light upon the question of who is the murderer. That is the question and only question for your consideration. In describing who the murderer was there is only one witness, of 160 who have been examined, that throws one particle of light upon that dark and dismal scene. There is only one witness that can tell you one thing in regard to the nature or the character of the man who assassinated Simeon Conoley, and they tell you, gentlemen of the jury, that we have shown injustice in bringing that witness here, that we have gone too far in bringing an old lady stricken with palsy for thirty years and confined to her bed for twelve years to this place to testify. Ah, no; gentlemen of the jury, human life is at stake. Did you hear it? Human life is at stake! A valuable life, if such lives are to be found anywhere, and that old lady, though she was old, was ready and willing to come and tell in her feeble tones, in language not to be misunderstood, that the man was not the defendant. Ah, gentlemen of the jury, the last counsel would not say one thing against her character; he told you that ere long she would have taken her everlasting departure to the future world, and that he would leave her without saying one thing against her. He did right.

When the State of North Carolina called D. B. McLauchlin, one of their witnesses, on the stand, and he tried to contradict the testimony of the old women, if I had been as you, one of the jury, and up to that time had made up my mind to convict that man, that would have rung the death knell of their case. They bring a man upon that stand and produce a plot of the buildings and surroundings and do not dare, gentlemen of the jury, to produce the man that made the plot. Put a witness on the stand there to testify in regard to the surroundings from a plot which was wrong. Now, why was it that they did not put the surveyor on the stand who made the plot, if he was a surveyor, and I do not believe he was? No matter, they bring a plot there, and that plot, under cross-examination by the counsel, is found to be as false as could be. They put Mr. D. B. McLauchlin on the stand, and you would conclude from his demeanor and the very tones of his voice that he was one of these extremely busy bodies, and he with a false plot in his hand attempted to contradict the word of that old lady. You heard the question that was asked her in regard to Mr D. B. McLauclin, if she had not

told him so and so, and you heard her answer, "no, no, that won't do, stick to the truth." And I am reminded right here of one thing that the counsel said in regard to Col. French; the counsel said he had inscribed upon his banner the word "Victory" and went forth to the battle as one of the soldiers; that he returned with his banner down, returned crestfallen; but you remember, gentlemen of the jury, that Col. French, when he took the stand to address this jury, told you that he proposed to inscribe upon his banner the last words of the old lady to this jury, that he proposd to inscribe upon his banner those words of truthfulness which rang in the minds and in the ears of this jury, "It won't do; stick to the truth." That was his motto, gentlemen of the jury, and he returned covered with victory.

They say to you, or they attempted to say to you by these witnesses, that the old lady had made a mistake, or that she had wilfully committed perjury; I believe from the course of nature that that old Church at Antioch will see another solemn assembly such as was gathered around the open grave of Simeon Conoley in the near future, the same mourners will be around a grave in double habilaments of mourning. That old lady, gentlemen of the jury, in testifying to you, not only saw Daniel McDougald under the ban of the law, she not only has seen the child that she nurtured downtrodden and persecuted, but, looking across the open grave, she saw another scene, she saw—her mind was bright enough to see it—she saw eternity in all its joys and all its horrors. While the life of Daniel McDougald may be sweet to her, and while she may be glad to gather him once more into her old, palsied, feeble arms, nevertheless a woman of her life and her character, a woman of her faith, would rather have life eternal. I argue to you that, no matter how strong the tie might be that bound the grandson to the grandmother, and no matter how many tender kindnesses he may have bestowed upon her in her age and affliction, nevertheless, when the test came between the life of Daniel McDougald and the life of her own soul, she would have chosen the latter. It is folly, gentlemen of the jury, to attempt to break down the character of Mrs. Effie Conoley. Better, better, ten thousand times better would it have been for this prosecution to have never asked Effie Conoley a question on cross-examination. I was struck with the opening words of one of the counsel for the defendant, a young man, the youngest man in this case; when he arose to address you he told you he was not only here as the Attorney of Daniel McDougald, but was here as a friend of the man.

Gentlemen of the jury, the old lady is corroborated by a man known to every one of you, or I will say to many of you; she is corroborated by as good a man as any in Robeson, and that is Mr. R. F. DeVane. I believe, if J. C. Murchison had been called to the stand and examined, that she would have been corroborated by him, but he was gone, by the permission of the State of North Carolina, gone without the defendant's knowledge or consent. The State, gentlemen of the jury, in the very outset of this case, before this jury was impannelled, in your hearing, took considerable pains to inform the defendant that certain of the State's witnesses had been discharged, but never was the name of J. C. Murchison or of R. F. DeVane mentioned in connection with the witnesses who were discharged. But they say, gentlemen of the jury, why don't you put Conoley on the stand, why don't you call the little boy Edwin to the stand, why don't you call Lizzie Conoley to the stand? We hurl it back with ten fold force and ask the question in tones of thunder: why did not you do it? If they had wanted to have thrown all the light upon this murder possible, if they had wanted to describe the man who perpetrated this fiendish crime, why did not they do it? The bare fact that they have withheld from this jury the testimony of the Conoley's argues strongly that they have not dealt fairly with you. Who is it that is prosecuting D. A. McDougald? Flows there one drop of the blood of Simeon Conoley in the veins of his persecutors? Turn where you will and see a relative of the dead man, and you see one whose earnest desire is that this man be acquitted; and who dares to impute any improper or unrighteous motives to this old man? Why did not you put Edwin on the stand? Why did they not do it? We have given them the best, the very best wit-

ness in regard to the transaction; if they had wanted to contradict the testimony of the old lady, why, some of the parties present were the proper ones to do it.

Now, there is a gap of about eighteen miles from the scene of this murder to Maxton; they have got the gap, and they have attempted to fill it by the testimony of one man, Edgar Gillespie. If there ever was a man that ought to be prosecuted for perjury it is that man. A man, gentlemen of the jury, that will take money, and I charge it upon that witness that, according to the testimony and according to the connection of that man Daniels with that community, I charge, gentlemen of the jury, that that man was evidently a bought and paid witness. Any man that will take money is worse than a Judas; some one of the counsel have referred to the prisoner at the Bar as a Judas on account of his deep and profound love for his uncle; but any man or woman that will go upon the stand and let his or her testimony be influenced by any money whatever is nothing short of a Judas, a murderer of the blackest and most damnable color. Have they introduced a single witness to prove the character of their man Edgar Gillespie? They have brought him upon that stand, and they had him to rehearse to this jury the most important evidence that they had against the prisoner at the Bar. One of the counsel, my brother McLean, has remarked to you that if the testimony of Edgar Gillespie was true that this case would end here and now, and I remark to you, gentlemen of the jury, that if the testimony of Edgar Gillespie is not true that the case falls as flat as it can be. I do not charge here upon the State, and I do not charge it upon the insurance company, that they knew the character of Edgar Gillespie, but I say to you, with all the money that has been spent in this cause, with all the zeal of Mr. D. B. McLauchlin and Mr. Daniels, who are going hand-in-hand ransacking houses, and disturbing people in the community, it looks to me like they ought to have known something about the character of the men that they bring here to swear away an honorable man's life. If they knew, gentlemen of the jury, about the little paper that Mr. McNair signed and sent to the office of the Carolina Central Railway in Wilmington; if they have traced up as small a matter as that, it looks like they ought to have traced up the character of their chosen witness, Edgar Gillespie. Have you, gentlemen of the jury, have you ever seen or heard of a case in which so much pains, so much zeal, has been manifest in working up the slightest incident into a mountain of prejudice against the prisoner.

There is one thing, gentlemen of the jury, I will ask right here. Mr. McKinnon testified that the night of this murder there was a man came to his store near Campbell's Bridge and called himself Mr. Cole; that he had brought a raft of timber that night, and he sold him some crackers. You recollect it, do you not? They cross examined Mr. McKinnon severely with regard to when the man came there, and early the next day whom does the State turn up but Mr. Cole himself; while he can prove that he did not leave the clothes there that night, did you hear that Mr. Cole had another man with him, and when the counsel for the defense asked if there was anybody with him, he answered "yes." Now, gentlemen, mark the shrewdness of the question that was then asked by the State: "but he went back with you, did he not?" Not one word whether or not that other man had left the clothes there; he just went back with him, but he did not say a single word about his partner leaving any clothes. Well, gentlemen, if they ran on such small points as that, why was it that they did not look up the character of their witnesses at the same time? If we had not attacked his character, and if we had not proved clearly to the minds of this jury that that witness had sworn to a falsehood, they would have asked you to convict this man, to take his life away, upon that testimony. In the light of this testimony, I charge that that man, Edgar Gillespie, wilfully and maliciously lied. John Williams, whose character has been proven to be good, swears to you that on that night he, Gillespie, was not at home. Gentlemen of the jury, John Williams' character has been proven good, and Edgar Gillespie's character has been proven as bad as that of any man that you ever heard attacked in a court-room. You may have been struck with one question that was asked

Stephen McLean, another colored man; Stephen McLean was called to the stand and asked whether Edgar Gillespie had made any statements to him or not in regard to this matter. Stephen McLean said that Edgar Gillespie told him that McDougald did come there, or rather that there was a man came there, and his wife waked him up. Notice that. Edgar Gillespie had left the stand the day before and had solemnly sworn that his wife was not at home that night. The State thought, gentlemen of the jury, when we put that witness Stephen on the stand, that it had corroborated Edgar's testimony, but we put him on the stand to show you that Edgar told a falsehood.

Most of the arguments of the State have been made in order to drive you, and, if not, to arouse your prejudices or your passions,—especially by Mr. Neal. Mr. Neal, in referring to the prisoner at the bar, reminded you that the prisoner had money, and that he wanted you to understand that there was a law in this country for the aristocrat as well as for the poor man. Is not that one of the most miserable arguments that you have ever heard given to a jury in your life? Does Daniel A. McDougald bear the stamp of an aristocrat. Well, I should think not; a boy that has, according to the testimony, started from absolute poverty and, by hard licks and honest intentions, laid himself up a small sum upon which he should have been independent had not the State brought this foul charge upon him. Talking about aristocracy for the purpose of trying to arouse the prejudices of this jury, trying to make you think that you are trying a millionaire or a capitalist of some kind—a victim for the benefit of the Mutual Life Insurance Company of New York. Again, what do you think, gentlemen of the jury, of a witness, and I refer to Mr. D. B. McLauchlin, what do you think of a witness who will go hand in hand with a representative of this Insurance Company to his neighbor's house in the night time, where there is an aged and infirm lady, and break open chests and trunks, and overturn the bed for the purpose of trying to work up testimony against this prisoner? Gentlemen of the jury, those men did it. D. B. McLauchlin ought to be indicted for forcible trespass. Talking about how Simeon Conoley was murdered is bad, it was a bad crime, but I tell you, stepping in almost the same steps was D. B. McLauchlin and this insurance agent when they invaded the premises of this old lady on that night.

Well, there was one thing, gentlemen of the jury, that was said by one of the attorneys that was unfair. In referring to the counsel who had preceded him, my respected friend, Judge MacRae, and my young friend, John D. Shaw, he referred to them as corporation lawyers. Where is the proof, gentlemen, that either one of these men has ever appeared for a corporation, and I take the responsibility and say that they defy them to show any proof, that they ever appeared for a corporation trying to take the life away from a man. They say Judge MacRae has not exactly managed the case right; Judge MacRae ought to have brought you the testimony of these Conoleys; Judge MacRae, in order to have done justice to his client, ought to have introduced these Conoleys as witnesses. Oh, well, gentlemen of the jury, there are a great many of us, my friend Mr. Neal not excepted, that may well hope that the time will come when we shall have reached the judicial eminence of Judge MacRae. The only corporation lawyer here in this Court was Mr. Neal, and I say to you, gentlemen of the jury, that Mr. Neal's demeanor in prosecuting this man was not what it should have been. Did you mark the difference in the manner in which Col. Rowland and Mr. Neal addressed you? Col. Rowland was discharging his duty as he thought would be in strict compliance with his conscience, but when he did deal the blow that he did it struck him to the heart. Mr. Neal was terrible in his denunciations of the prisoner, and he was terrible in calling him a red-handed murderer and assassin. Don't call a dog a sheep-killing dog until you prove it; don't call Daniel McDougald a murderer until you can prove it, and don't call him an assassin until the Courts say that he murdered his uncle. In order to make his remarks more forcible to you, gentlemen of the jury, he does not say that Daniel McDougald murdered his uncle, but that Daniel McDougald murdered his mother's brother, to try to touch your sympathy and thus more effectually deal his blows.

There has been a great deal said with regard to this lampblack; well, now, I just want to say one or two words in regard to it; I judge that there are men in this jury who have had some experience in the timber business; I have, and I know something about it; any man handling timber is going to handle lampblack; the man that handled those logs that passed down that creek in all probability handled that lampblack that night. What business, if Daniel McDougald is the murderer, what business did he have with that lampblack after he had blacked himself near Shandon on that day? Why did he want to burden himself with it all the way around to where he washed, taking this evidence of his guilt with him wrapped in a Wilmington *Messenger?* For that lampblack was wrapped in a Wilmington *Messenger.* And had it been Daniel A. McDougald that committed this crime they would have had that *Messenger* here, and that paper would have borne upon the right-hand corner the name of Daniel A. McDougald. These newspapers are dangerous things, gentlemen of the jury; if a man wants to commit a crime, he better not have newspapers lying around; they are one of the most dangerous things in the world, because the name of every man that takes a newspaper is on it, and they all know it. But what did he want with that lampblack, I ask you, after he had blacked his face, after he had committed the murder, why did he want to carry it on to the point where these clothes were found? It is out of reason, and you, gentlemen of the jury, know it. Another thing: they have not proved to you that there is one drop of water between Shandon and the place where this black man was first seen. Not a drop of water on the road; well, now, it would be quite a difficult undertaking for a man to black himself up with lampblack without the aid of water, it is almost impossible. And there is something else to which I want to call your attention. April is not freezing weather by any means. Mr. Cottinham, or some of the witnesses who testified, said that on that particular day they all wore dusters. Suppose one of you had blacked your face with lampblack and walked a mile on an April day with a bundle on your back; what would be the condition of your face? If there is one drop of perspiration in you it would have come out, and your face would not have glittered. You, gentlemen of the jury, who are used to labor, know that to be a fact, and any man who has ever walked on an April day under an April sun knows that.

There has been a great deal of Scripture in this case. My friend, Col. Rowland, indulged in it freely, and I am glad to see that he is a Bible reader, I never saw a good lawyer or a successful politician who was not a Bible reader; and now, I just want to repeat you some of his quotations from the Bible. He goes back to the Garden of Eden, and the first one he takes is Cain; these are the examples, gentlemen of the jury; the next is Achan, and the next is Gehazi, the servant of Elisha, that followed after the prophet, and another Bible incident that he brings to your mind in order to show you that a man standing upon the pinnacle of respectability can at one bound come down into the depths of sin and degredation, but in every one of those cases there was a motive. Achan, for instance, committed the crime because he wanted the wedge of gold and the Babylonish garment. Cain kills his brother; he had a motive: he wanted to aspire to the position in the affection of his father and his mother which Abel held—there was the motive. And Col. McLean went way back up yonder when Satan fell. Well, Satan had a motive: he wanted to aspire to the supremacy of the Almighty himself. Coming on down he takes in Judas; he was one of the twelve; but if you recollect, gentlemen of the jury, Christ said he was a murderer from the beginning. Judas had a motive: he sold his Lord for thirty pieces of silver. Every single one of the incidents which Col. Rowland or Col. McLean have mentioned, every one of these Bible characters, had a motive for what they have done. Now, I defy them; they can argue here until the sun shall set and rise again to-morrow morning and they can never convince this jury that Daniel A. McDougald had a motive to kill Simeon Conoley. It has been argued to you and argued well by the defendant's counsel, in speaking of the possible motive that the prisoner at the Bar could have had in committting this crime, that he was only the son of one of the sisters of Sim.

Conoley. Sim. Conoley had two sisters and a brother. Daniel McDougald being the son of Mrs. McDougald here, and she had four or five children, he is removed two steps from Simeon Conoley, and besides that there are several others standing on an equal footing with him; besides that Simeon Conoley's mother was still alive. Col. Rowland explains it to you. Just indulge me and I will repeat it to you. Here Col. Rowland has struck the motive at last; I am going to quote his words: "If the policy is paid Lizzie Conoley, she could pay the defendant back the amount of the mortgage on his land which had been paid Mr. Thomson." It is a good one, gentlemen of the jury, that is a good motive; they talk to you about a mortgage that the defendant had paid Mr. Thomson. Did you hear that they called Mr. Thomson on the stand? Some of you know him; they called him and brought him there upon that stand, and after having brought him to the stand, they did not offer him as a witness—and I think the subpœna will show that they had him at Lumberton. They want you to jump at conclusions, gentlemen of the jury, they want you to convict this man upon suppositions, something no sane man will do.

Well, now, that is the motive: if Lizzie Conoley is paid that policy, etc. I ask you to search your own mind and let your conscience answer the question, where is the evidence to justify any such assertion as that? If Lizzie Conoley had gotten the money she could have paid this man back his just debt. Well, now, that is the most fallacious argument that I have ever heard. Would you convict a sheep-killing dog upon such a proposition as that? You could not do it. Had Daniel A. McDougald wanted to wrong anybody, the testimony is that his credit was as good, he stood as high, as any man in Richmond county, had he desired to wrong anybody, how much easier it would have been for him to have bought goods to an unlimited amount and then to have closed the doors and defied his creditors. Have you any idea that that little place that was described was worth $5,000, this little place on which Sim. Conoley lived? If it was not worth $5,000 what did Daniel A. McDougald put himself to the trouble of insuring this man's life for $5,000, paying that premium out of his own pocket, paying the sum of $239? Oh, it is far-fetched, gentlemen, it is the most far-fetched theory that I have ever listened to. They say he had land, and the testimony is that Sim. Conoley's sister, not Sim. Conoley, made this mortgage; there was not one word that Sim. Conoley gave it to Mr. Thompson. Well, if that was the case, if the title of the land had passed into the name of Daniel McDougald, if he owned the property, what else in the world did he want? Did he want to kill Simeon Conoley for the purpose of getting something that already belonged to him? It don't look like it, does not seem like it would be probable. That is the motive. They have proven and proven, and searched all around, and at last Col. Rowland struck it. Just state it to yourselves, gentlemen of the jury, and make what you can out of it.

I was struck, gentlemen of the jury, with another remark that one of the counsel made; after admonishing you with regard to the nature and sacredness of an oath, he wanted you, when you came down from this Court room to render a verdict that would meet the approbation of all classes and conditions of men—render a verdict that everybody would applaud to the skies. Well, you may render forty verdicts and you could not do it to save your life; you take any great men in this world and there is going to be a division of opinion existing between those men unless they have heard the testimony that you have heard. I do not care one straw about what the public may think in regard to it; who is on oath to-day? Who is trying this case; is it you or is it the public? Public opinion can be aroused to frenzy and to passion, and would sweep sometimes in a mighty wave over the head of the most innocent and when it rebounds it rebounds with equal fury. I say to you that you are upon your oath to try this case, and it is not necessary for any counsel to suggest to a jury of Cumberland county citizens the nature and solemnity of an oath, and when you have done your duty, you will have done it as your conscience will dictate, you will have done it honestly, fairly, squarely. Alter the counsel commenced speaking,

it was exceedingly hard to tell for a while whether we were trying a case of murder by shooting or a case of murder by poisoning, bringing in here one of the most absurd, and one of the most remarkable propositions that I ever heard in my life in regard to a former attempt of Daniel A. McDougald to murder his uncle. Daniel A. McDougald acted in regard to that candy as any sensible man in the universe would have acted; if there was poison in that box I say to you that the defendant did not place it there, because Dr. Prince has sworn to you, and he knows the nature and solemnity of an oath, he tells you that that poison was down at the bottom of the box. If he had made an attempt to poison his uncle, nothing short of a maniac would have adopted the course that they say he adopted in regard to it afterwards. If he had done it the secret was his own and it was safe, it made no difference what any man might have said in regard to it.

But they try to break down the testimony—and I am sorry they do it—of as honest a country boy as I ever saw called upon the stand, Neill Conoley. There is the young man—it is true that he has not upon him the polish of some of us; it is true that he does not come upon the stand clad in fine garments, it is true that he does not bear the marks of refinement and culture, but he came bearing upon his countenance the impress of truth and honesty. Did you see him, during the most severe cross-examination that I ever heard a witness subjected to in this court-room, the victim being a poor, ignorant country boy. Did they take any of those gentlemen from Laurinburg, who were well known, to submit to such a cross-examination? Ah, no, they took Neill Conoley, a poor boy. But throughout one of the most vigorous cross-examinations that I have ever heard in a court-house, he maintained that strict course of truth and honesty, and not in a single word did he contradict himself; and he tells you plainly, in the very best words that he could command, everything connected with those clothes on that particular night, and I say to you that if you believe the testimony of Neill Conoley, then Daniel A. McDougald knows as much about who took those clothes as a man in the remotest parts of the earth. It has been argued to you, and argued to you well, that the man who concealed those clothes at Campbell's Bridge on that day was the man that followed like a sleuth hound on the track of Daniel A. McDougald on that day; and when darkness had spread itself over the face of the earth he went in a clandestine and secret manner and removed the clothes as he had attempted on that morning to do. Do you believe Neill Conoley? If you do, Daniel A. McDougald knows no more about those clothes than the infant in its mother's arms. But the cross-examination was fearful, I say to you that I should shudder to undergo it.

They say he ran away. More Scripture—that is from brother McLean—"the wicked fleeth when no man pursueth." Well, it was not so in this case. The wicked was not fleeing when no man was pursuing. Did you hear the testimony of Duncan McBryde? It was unfortunate for the State that that man was ever introduced on this stand. He met McDougald and told him that Millard Moore was going to fasten this crime upon him, and if you knew Millard Moore you would know what it meant; from the testimony, I think I am warranted in saying that throughout the length and breadth of Cumberland county, or Robeson or Richmond, there is not a more dangerous man living to-day, a man who has been proven to have entered the jail walls not less than twelve times, a man with all the shrewdness and cunning of a demon. Can you imagine the feelings of the defendant when these words rang in his ears? If Millard Moore should make a threat against me, I should watch him with the closest scrutiny, because there is no man living to-day whose threats I should fear any more.

Did you hear what they say in regard to Maxton, the very hot-bed of prosecution against this man? The counsel stated that Robeson county is not prosecuting, but Maxton. Did you hear those threats of violence? Is there a man on the jury with boldness and fearlessness enough, with a knowledge of these threats ringing in his ears, that could stand the fire, I do not care how innocent you are? That was the case, and in order to put the fuel

on the flame, a man who did not know that he was inflicting a blow, I have no doubt as good a man as there is in North Carolina, the Rev. J. T. Lyon, did so when he asked him where he was running away to.

Now, gentlemen of the jury, you have heard everything that he says in regard to his flight. I will forbear to make any disparaging remarks about my friend Col. McRae, but Col. McRae has opened the way for the New York Mutual Life Insurance Company; Col. McRae was the first man that put the sleuth-hounds upon the track of Daniel McDougald by offering a reward for him. Col. McRae was the man that went as an under-bailiff to the State of Oregon for this man; Col. McRae, gentlemen of the jury, occupying the position that he occupies as an agent for this Company that is prosecuting him, ought never, no, before Heaven, he ought never to have tried to draw from him confessions, or any words that would be used against him. Ah, no, Col. McRae ought not to have done it. But what did he get? What did he get throughout a ride of 3,700 miles, as he describes to you over the Rocky Mountains and through the Cascades? What did he get? Adopting exactly the same line that the prosecution is adopting, Col. McRae said to him, "if you will just say where you were that night it will be all right;" and the prisoner at the Bar said, "it might give me considerable difficulty;" and they bring Col. McRae in here to prove that; does not that look, gentlemen of the jury, like they are going a little too far in this prosecution?

But I was talking to you about Moore a minute ago; I was talking about Millard F. Moore, the man who has been the bosom friend and gone hand-in-hand with this man Daniels; the man who was with him, as I recollect the testimony, together with D. B. McLauchlin; and so the man must be, as I charge, gentlemen, as I believe the testimony will warrant me in charging, that that man Moore was one of the underlings of this Insurance Company to gather this man Daniels evidence for the prosecution. Moore, gentlemen of the jury, was on hand when some of this work was being done; Moore was the man to gather, with D B. McLauchlin as supervisor, evidence for Daniels. Moore was the man who shot from ambush a poor, unoffending negro within a hundred yards of Simeon Conoley's house. They say to you that the prisoner at the Bar attempted to fasten this thing on Millard F. Moore; they further say to you that he wanted to lynch him under the impression that his grandmother was frightened nearly to death—and that only shows the care that he had for the old lady—he wrote the note, but is there a scintilla of proof that the prisoner was at the house of McBryde at all? Did he swear out a single warrant against Millard F. Moore or against John Kelly, and did the prisoner take any part in that prosecution? Not a bit. But they say he ought to have done it; they blow hot and they blow cold in one breath; they say if he did not swear out a warrant he ought to have done it. The testimony is that Mr. M. A. McDougald, the brother-in-law of the deceased, swore out the one and Mr. John Conoley, the brother of the deceased, swore out the other; and Mr. M. A. McDougald employed John D. Shaw, Jr., to prosecute these parties. What connection has the defendant. D. A. McDougald, with the prosecution? None at all; just as much, though, as he has with the murder.

Now, the testimony is broken all to pieces; it is broken at Maxton at the water tank, it is broken at Shandon, it is broken at the house, it is broken at the house of this man who says that the prisoner came there to wash next morning. I say that every allegation they bring out, upon which they ask you to convict this prisoner, has been refuted and successfully refuted. They insinuate, while they dare not proclaim it to you, they insinuate that Dugald McNair has not probably told the truth; while they dare not say so plainly, it is insinuated, and I say to you that insinuations are exceedingly dangerous things to convict a man upon. Now why do I say they insinuate? Because they went to the extremity of sending down and getting the railroad officers of the Carolina Central to have a little strip of paper, the report of that conductor copied, which showed that no passengers went from Laurinburg to Alma with him; they thought, just let him come up and swear that he carried him down to Alma, let him come if he dares;

but when he comes upon the stand he surprises them; he tells you, gentlemen of the jury, and he tellst you frankly, that owing to the friendship existing between them—that is Capt. McNair and the prisoner—on the morning of the 21st day of April he allowed Daniel McDougald to pass free to the town of Alma. Well, I expect if we had stopped right there that they would have said that he did not tell the truth; we did not stop, we brought the most intelligent colored man that has been upon the witness stand through this whole trial, and he corroborates him, every word that Dougald McNair has told you he recollected distinctly, and he swears positively and emphatically to you that, on the morning of the 21st of April, instead of stopping at the town of Maxton, the prisoner went on to Alma; so they have different testimony in every respect, Mr. Cottingham and Mr. McCormick contradicted by the testimony of Capt. McNair and his switchman, Horace Smith

Now, as the counsel who preceded me has told you, if it had been a civil action, why then his Honor would charge the jury that the burden of proof was on the Plaintiff, and he must convince you by preponderance of testimony that this man did stop at Maxton on that morning. But this is different; human eyes and human ears are apt to see and hear things and think they are certain when they may be entirely mistaken; and so much care and so much precaution does North Carolina throw around its citizens that it declares that the life of no man shall be forfeited upon the gallows until the State has convinced a jury beyond a reasonable doubt as to his guilt. The State of North Carolina must prove to you the allegations upon which they rely; they must prove that this man stopped at Maxton, they must prove beyond a reasonable doubt that he was at the water tank; they must prove to you beyond a reasonable doubt that he blacked his face in a little skirt of woods; if upon a single one of those particulars your mind is in uncertainty and doubt, if you lay any stress upon your conscience, you are bound to return a verdict of "not guilty."

I have talked longer than I have intended to do. As I remarked to you at the outset, I was just passing along here and there on the testimony. On Monday morning the Commander in Chief of the defense will close these arguments. I have about said to you, gentlemen, all that I am going to say in behalf of the life of this man. Daniel McDougald is a stranger to me and to you, but he comes to Cumberland and places—what? His property? no, his life in your hands. The State of North Carolina has offered more than one hundred men, as good men as are in the country; Daniel A. McDougald has chosen you and puts his life in your hands; and as the last counsel remarked, just before taking his seat, in a short time all that will stand between him—the only breakwater between him and eternity—will be this jury. They may talk to you about its being nothing but the law; ah, there is something more than that: Gentlemen of the jury, you have a duty to perform, and it is a duty for which you have got to answer at the Bar of Almighty God, that is to give this man the benefit of his defense in toto.

And they have something to say about Judge MacRae's not saying whether he thought the prisoner guilty or innocent. I say to you, gentlemen of the jury, from the very bottom of my heart, and I do not believe that you would think that I would tell you a falsehood willingly, but from the very bottom of my heart I do not believe that Daniel A. McDougald is guilty of this crime; if Daniel A. McDougald committed that crime, there has never been another such a man born; the story that one of the counsel alluded to, Dr. Jekell and Mr. Hyde, would be nothing compared to Daniel McDougald. You may search the pages of fiction, you may go almost into Holy Writ, and you cannot find the history of such another character recorded. Think of it, gentlemen of the jury, that a man said to be as intelligent a man probably as any in the county of Richmond, think of it, that in the broad open sunlight of Heaven—and I am not going to wax elequent over sunlight or moonlight—but he, in the broad open sunlight, would leave his home in the town of Laurinburg, go to Maxton, walk up to the water-tank, tell his name, get on the train, go to Shandon, get off there and start in the direction in which Conoley lived, go out and black his face, quit the road, then go on to the house to commit this crime, and then, more than that, the next

morning, go to a negro man's house that knew him and wash his face there, then walk into the town of Maxton, a thickly populated town, after the sun had risen, and it must have been considerably after, because that house must be four miles from there, and in the broad open daylight not a single man saw him until he was standing on the platform of the depot; if Daniel A. McDougald had walked those streets that morning, if he had gone down the road from Conoley's probably there would have been dozens and dozens of persons who would have seen him and would have come here before you in this Court House during this trial testifying to that fact. I say, gentlemen of the jury, that the proposition is an absurd one, it is one that no one ever heard before.

There is one other thing now, gentlemen of the jury, if Daniel A. McDougald desired to kill his uncle, the testimony is that he only lived about 18 or 20 miles from the scene of the murder; if he wanted to kill him would it not have been much easier, would it not have been in keeping with the acts of an intelligent man to have mounted a horse after the shades of night had fallen and ridden there, and slain old man Sim. Conoley and been back in Laurinburg before daylight next morning, instead of making a public exhibition of himself. I say, gentlemen of the jury, that the theory is impracticable, that it is extremely improbable.

Now, gentlemen of the jury, when Major Shaw shall have ended his argument this defendant will have said all he can say. The judge on the Bench will give you the law, then you will have in your hands, to play with, as it were with a ball, the life of the defendant; if you want to hang him you can do it; from that there is no appeal; we can appeal if his Honor has not done fairly, but if you say Daniel McDougald is guilty it carries him to a felon's grave, it smirches forever and eternally one of the fairest names that Richmond county can boast; it clothes in double habilaments of mourning his family. I will not try to awaken your sympathy or arouse your prejudices, but one remark in the close of the testimony of Mrs. Conoley had a great deal of pathos in it; she said: "he gave me many things that I needed." That carried with it, gentlemen, more than human words can express; that carried with it all that is meant by a strong, stout, stalwart young man standing as a breakwater between the old lady and want; one protector is gone, gentlemen of the jury; in the light of this evidence are you going to remove the other, are you going to wound the heart that has already been wrung with hundreds of sorrows? Because it seems that her life has been under some sort of an ill-fated star; it does seem so, gentlemen of the jury; and you know, when she was telling you about this conversation with this officer that went there and sat down beside her, she told him that almost from her girlhood the measure of her affliction and sorrow had been full to overflowing; her son, but a day or two beforehand, had been struck down without a moment's notice; now will you, gentlemen of the jury, in hearing my last words to you in behalf of that man's life, and it is the first time that I ever plead with a jury for a man's life, will you, in the light of this testimony, drive another dagger to the hearts of these old ladies and of the father? Will you take from that mother her first-born son, or will you say what I believe your consciences will demand that you say to this prosecution, that they have failed utterly to prove guilty D. A. McDougald.

Gentlemen, it is a serious matter; take his life if you want it, but I will make the prediction that sooner or later—send him to the gallows, let him fill a felon's grave if you will—but I make the prediction that sooner or later the true murderer of Simeon Conoley will be discovered. Instances upon instances are recorded in the law books. I could turn and show you hundreds of them where men have been convicted on much stronger testimony than this, and died and been buried, and afterwards it was discovered that the jury had made a fearful mistake. I say the books are filled with them. It has not been long since I read an account of where an old man was executed, and in less than ten days afterwards the murderer was discovered. It would fill us with horror if Daniel McDougald should be led by Sheriff Smith to the scaffold and it was discovered afterwards that he was not the murderer. You have the power to acquit him and the evidence justifies you in acquitting him.

Much has been said to you, gentlemen of the jury, in regard to that most terrible scene in history, when the people, with all their blood-thirsty determination, gathered around the hall of justice and cried out "crucify him! His blood be on us and our children." But oh, gentlemen of the jury, if this man's blood is spilt it will not be upon the Insurance Company that the responsibility will rest. If this blood is spilt that soulless corporation will have nothing to answer for, because it is nothing, but upon each of *you* jurors, you men of consciences, you men of souls, men of responsibilities, will the burden rest. Do your duty if the Heavens should fall, do it honestly, fairly, conscientiously. Do it and all will be well with you, all will be well with the prisoner.

JOHN D. SHAW, SR.—FOR THE DEFENSE.

May it please your Honor and Gentlemen of the Jury:

MAJ. JOHN D. SHAW, of Rockingham, N. C.

I do not come here before you this morning in the vain hope of making any oratorical display, and with still less hope of using rounded periods and well formed sentences that may glide smoothly into the reporter's book, but I come here in my plain way to plead for the life of my neighbor boy, that I have known and loved ever since he was a little child, to ask you in the light of this evidence to help me snatch him from the toils woven around him by the purchased testimony of this New York Mutual Life Insurance Company, and to aid me to hand him back to his old gray-haired father and broken-hearted mother. When I come here, I encounter the most unfair, the most blood-thirsty, prosecution that has ever been known in North Carolina; I find here, running through all this case, the devices and machinations of this infernal Insurance Company, this Company whose Attorney here tells you that he has no apology to make for his appearing; well, he may try until the day of his death to make you an ample apology and he could not do it; you and I and every man in this country has felt and do feel the power of these moneyed corporations of the North. This country to day is shaken from centre to circumference by this moneyed power. In a day they say to you, cotton shall not exceed 6¾ cents, and there it stays till your necessities force you to sell, then they congregate and say it must go to 10 cents in order that millions more may be added to our millions. They say that, for the successful enrichment of these corporations, the poor must be made poorer, and the rich richer. That is history every day.

But in this case they say, Daniel McDougald's life must be sacrificed in order to save that $5,000. Mr. Neal will not feel called upon to make an apology, but I tell you, gentlemen of the jury, when the criminal law of North Carolina is administered or represented to be administered by such power as this somebody ought to apologize for it. Whether he has a legal and lawful right to appear here or not I do not inquire, but I do say that it is dangerous, it is dangerous when you let the moneyed power of the North come here to administer the criminal law of this State in your open Court. Your life, your property, is not safe when their money can purchase testimony. Mr. Neal, or somebody else, gentlemen of the jury, here should apologize to this jury for Edgar Gillespie, Mr. Neal or some one should apologize to this jury for the false swearing of McLauchlin, and some one, gentlemen, should excuse the conduct of their witness McRae. I do not want to call his first name, and I hope that, if in the heat of this discussion, I should call his first name, that the fair reporter, whose bright face, amid all the gloom and sorrow of this sad trial, has been like a ray of sunlight, will not put his first name down in her notes. I do not want his infamy known to his relatives and

acquaintances. The first step in this case, in this drama, being enacted by this Insurance Company, is what? This man McRae, the agent of the Company, also Chairman of the Board of County Commissioners of Robeson County, abuses his official trust and aids in offering a reward for this man, and he did not possess the legal right to use the funds of the county of Robeson in any such manner. The Board of County Commissioners possessed no civil powers whatever, and nobody knew it better than McRae. What next? We find him sneaking to a justice of the peace to swear out a warrant against this prisoner, so that he might put the sleuth-hounds and lynx-eyed detectives of this Company after this man. What next? In order that he might ingratiate himself in the favor of this corporation and secure all the premiums, he is subpœnaed as a witness; now, having become a witness in this case, he is ready to do their work, and when this unfortunate man is arrested the first man to start is McRae, and when asked for the distance, 3,700 miles, he rolls it under his slimy tongue like a sweet morsel, thinking to further prejudice against this poor unfortunate man. What next? When he reaches him he expresses sympathy and regret, and endeavors to obtain the confidence of this man in his charge; he is a member of the church with him, he has claimed to be his friend. And on his way home, on his way home, did he talk to you, Mr. McRae, between the Cascades and the Alleghanies? Yes, gentlemen, when the load of living freight was moving over the majestic hills and mountains between the Cascades and the Alleghanies, and every soul on board was looking up through nature's beauty to nature's God, where do you find this vampire? endeavoring to ingratiate himself into the confidence of his prisoner; and when this mighty train was going upon the slopes of the Alleghanies, and every man in this train, calmed and subdued by the magnificent scenery through which he passed, seeing the hand of God in it all, had retired to peaceful sleep, with conscience void of offence against God and man, where is this Judas? When even Sheriff Pittman, the officer that went for him, was wrapped in sleep, there we find this Judas alone, in the dead watches of the night, trying to pull something out of this prisoner that might perjure him. Gentlemen, if there is anything mean, low, cowardly, it is for a man in authority to take advantage of a man in his power. What would you think if Sheriff Smith, big-hearted Jim Smith, should come here and tell you that he had been endeavoring to inveigle some confession out of the prisoner? Never, never would he do it, manly man that he is; and here, and now, I want to thank him for the kind manner in which he has discharged his unpleasant duty to this poor boy. No shackle has clanked upon his limbs in the hands of brave Jim Smith.

Did you ever know a man pursued with more relentless fury? Why, gentlemen of the jury, there was never a red-mouthed hyena that crept through the jungles of Africa, that pursued its prey with more brutal ferocity than has the Insurance Company tracked and followed this poor unfortunate boy, and with all McRae's services for his master, showing the feelings of the man that governed him in this case, when asked if he could swear what name he went under there, and it was objected to, unless he could tell what the prisoner said to him, said he, "I cannot swear to it, but I have an impression that it was McLauren." Believe him? Believe him under such circumstances as that? I leave it with you, if you can justify any such conduct, any such low, mean and cowardly conduct. If you believe the man, you are more credulous than I think you are.

This trial, gentlemen, has been unfair from its inception. My friends McLean and Rowland, men, gentlemen, that I esteem, did you see how they abhorred the thought that you should think that they had any connection with this miserable Company? We have got nothing to do with it; we would not touch it, we would not appear for it, we would prosecute no man for it. I was glad to hear that, and I thought that they would be equally frank in the balance of their argument. Not so. Even these good men, gentlemen, could not keep up that spirit of fairness; I was sorry to hear them say that they represented the people of Robeson county from whence they came, endeavoring to leave the impression, I do not say inten-

tionally, but leaving the impression upon this jury that the people of Robeson county, or some considerable portion of the people of Robeson county had employed these men. Now, I am authorized to say what I am going to say, because it is the truth, although it was not proved before you, and I have the same right to make the statement that they did to tell you that they represented the people of Robeson county. When this case first came up, and the prisoner was required to plead to the indictment, I demanded to know who they represented; they did not want to tell me, but they did tell, and when they said it, they said they represented two men in Robeson county, neither of whom was kin to Sim. Conoley, strangers and unknown. In this county, in years back, the avenging of blood was left entirely to the relatives and friends of the dead man and no one else; it was thought they would avenge all that was necessary. Now this is changed. I do not call the names of those two men, because the counsel that represent them do not, for some reason, want it known; may be, gentlemen, at this stage, they are ashamed to be known; I do not know how that is, perhaps it would not be right for me to tell you who they are; I will tell you this, neither one of those men, when Sim. Conoley was alive, has ever seen the day when he would lend him $5, but they are ready now to pour out their money to bow down that broken hearted mother. May God Almighty have mercy upon those men, and not crush them before they have time to repent of the great sin that they have committed.

That is not all. When such an oily-tongued man as Col. Rowland, I do not say intentionally, but when he cites the testimony, it is calculated to do harm to this prisoner; I refer, gentlemen, to the testimony of McMillan and Robbins; he said the defendant, after the killing, had described just how the murder was committed. Not a word of it so; what the witnesses did say was this, that after he he had gone to the funeral and had come back, three or four days after the killing, he told this.

I want merely to call your attention to some important points in the case. I wish I had the strength, I wish I had the time to take this case up from the very beginning, from the start to the end, and I am sure you would see the iniquity of it all. Robbins said some one called him to the door and shot him. The same, gentlemen, in regard to Mr. McMillan. I call these things to your mind, gentlemen, not only for the purpose of correcting the testimony; you recollect it, your minds will be refreshed from the case; another unfair position that has been taken by the counsel for the prosecution—I do not think the Solicitor will take such a position—these men that have preceded him for the prosecution are paid to say what they have to say, they are paid for it; the Solicitor, occupying the high office that he does, should come here willing to state the law correctly, to argue it correctly, for the law of the State of North Carolina does not want the blood of any of its citizens, any one of its citizens, unless it is obtained in a lawful manner. Now, these gentlemen who have preceded him tell you that Mr. McDougald must prove his innocence; you have heard it. The Court will tell you that that is not the law. Every man is presumed to be innocent until he is proved to be guilty. Now, gentlemen, until they prove to you beyond a reasonable doubt—I will get no advantage by misstating the law to you, I will be corrected by the Court if I misstate it, therefore I should be particular—I say until the State of North Carolina proves beyond a reasonable doubt that McDougald is guilty, he is not required to open his mouth to account for himself or to offer any explanation. That is the law.

This, gentlemen, is a case of circumstantial evidence, and you cannot scan it and weigh it too closely; it is uncertain, and so particular is the law in regard to this circumstantial evidence, that it says that, if you are not satisfied beyond a reasonable doubt of the truth of every material fact constituting this chain of circumstances, it is your duty to acquit. Further, it is the law, gentlemen, that if the defendant prove any one fact to your satisfaction inconsistent with his guilt, or consistent with his innocence, it is your duty to return a verdict of "not guilty." Furthermore, in this character of testimony, this circumstantial testimony, the law is, that if you are not satisfied that these material facts that are relied upon to constitute

this chain are reasonable and natural, then it is your duty to acquit. There must be reason, there must be naturalness; and under tihs peculiar case, with this chain of circumstances, there is another phase of the law, owing to the uncertainty of this kind of testimony, it is this: if upon the whole testimony you are left in a painful state of anxiety and uncertainty, it is your duty to return a verdict of "not guilty." That, gentlemen, I suppose to be the law, and in that view I will discuss it. I hope I am right in my construction of the law, because I am going to base my argument upon that view of this case.

Now, gentlemen, I want to show you in the beginning how particular you ought to be in this testimony. You never have been engaged in a case where your duties were more important than they are now. It won't do for you to make a mistake against this man. The counsel appeal to you and tell you that "whoso sheddeth man's blood by man shall his blood be shed." You are not the ones to act on that. Don't you know here for two whole days how they endeavored to lay the foundation of this case by proving that at that concert McDougald wore a duster? Don't you recollect how they put up witness upon witness to prove it? Don't you recollect the witness McMillan? Don't you recollect the witness Robbins? Don't you recollect Rich? All swore to you, gentlemen, that they were there in the audience that night of the concert, and that this man McDougald wore a duster. These are all good men, I know them all; they were swearing to you what they believed, and, gentlemen, if this life had depended upon that issue, and you had gone out, what would have been your verdict? McDougald killed him. But afterwards, when the testimony for the defense is offered, the man McGann, whose character is admitted beyond dispute, and Robert Phillips, as good a man as ever lived, the men who dressed him, the men who acted with him, tell you that he did not wear a duster. I call that to your minds, now, gentlemen, to show you how careful you ought to be in taking testimony; here are three good men who have sworn to an act which the State itself admits to have been a mistake, and such a mistake as that this man might have lost his life by it. How careful should you be, gentlemen.

Did this man go to Maxton on the morning of the 21st, get off and stop? How is that? You ought to be satisfied, gentlemen, beyond a reasonable doubt that that is so The State ought to satisfy you beyond a reasonable doubt that McDougald, on the morning of the 21st, went to Maxton, got off and stopped. If he did not the chain of the State is broken, the chain of the evidence is broken. Now, to prove that fact, what do they do? What is reasonable, gentlemen, I leave it to you, what would be reasonable for this Insurance Agent living in the town of Maxton, what would you reasonably expect of him? Where would you reasonably expect him to get his testimony? You would say in the town of Maxton, a town of 600 inhabitants, where this man, from morning until noon, until the train went to Laurinburg, was, with the exception of when he went to Alma; that could be established beyond all peradventure. What do they do? Let me ask you why I do not go to Maxton to get testimony; you had as well go to hell in search of a professing christian as to go under the influence of this insurance agent living there to get testimony in favor of the prisoner. What do they do? First, they hold up a man by the name of Herring, that had the impudence to come here and tell you that he was from Laurinburg; an insult; the people of Laurinburg would not tolerate him there twenty-four hours; he is from the heart of the outlaws in Robeson county; their blood-thirsty vindictiveness is shown in every line of his testimony He is contradicted by three or four witnesses; he is contradicted by himself in the unreasonable tale which he tells about this hat, trying to fix it upon McDougald, and he describes this hat four or five days before it was found at Campbell's Bridge; he states that this blacking could be seen plainly under his eyes and on his neck, and that he looked to be about sixty years old. Every word of his testimony is false, as false can be; if there was no witness here to contradict Herring you could not bring a verdict against a man whose life was at stake on his testimony.

Where next does this Company go to prove that he was blacked at Max-

ton, or that he was there? They go and hunt up a traveling Israelite, a wandering Jew. Where they got him I do not know, it might have been in McRae's Cascades or his Alleghanies, but I rather think they must have got him in some second-hand clothing store in New York. He is brought here to tell you that he was discolored under the eyes, and that he was a little black in his complexion; how unreasonable that is. Now, as I am on the subject, I will finish it. On the part of the defense, Capt. Powers, as good a man as could be brought here from anywhere, tells you that he saw him face to face, and that his was right opposite to him. Oh, they tried to prove afterwards that he crouched; gentlemen, Capt. Powers says that he was leaning up against the wall at the depot and came and stooped down and talked with him. Sellers, living at Alma, McGirt, living at Alma, tell you there was no blacking on his face. Now, gentlemen, under this testimony, have not you a doubt whether there was blacking on his face or not? Are you satisfied beyond a reasonable doubt from this testimony that he had black on his face that morning? You are conscientious, good men; you will not say that you are satisfied beyond a reasonable doubt that he had blacking on his face. And Crowson, the nephew of a Methodist preacher—as unfair as they are they would not say he is the son of a preacher,—the nephew of a preacher, says he had red mud on his feet in the town of Maxton. There is not a pound of red mud in twenty miles of Maxton; the color of the mud in and around Maxton is the color of the hearts of some of these witnesses that have been testifying here, as black as ink. Now, gentlemen, don't you know that if this man had been there in the town of Maxton, in the heart of the town, from early morning till 12 o'clock, they would have brought some other testimony; there is not any doubt about it. Powers is the first man that sees him, when the train gets there; he would have been blacker then, his appearance would have been more unusual then than at any other time, and he swears to you that there was nothing unusual in his appearance, and that his face was not blacked.

Did he get off and stop at Maxton?—the proposition that I first intended to discuss. Now I submit to you, gentlemen, that the testimony is overpowering that he went to Alma and got off at Alma. They bring up a witness here, Luther McCormick, who testifies that he saw him when he got off, and describes about all these bundles and valises and dusters and oilcloths that he had, and then swears that he did not get back on the train; Dugald McNair, as true a Scotchman as ever God put honest breath into, tells you that he went with him to Alma; Horace Jones, the man that was on the train with him, swears to you positively that he went to Alma. Can you have a doubt about that, that these two men have told the truth? Can you? Dugald McNair has got no interest in this matter, no, a thousand times no; gentlemen, if there is any reason to believe any testimony that has been introduced here it is his. He gave testimony, gentlemen of the jury, that he did not collect his fare; it is against his interest to so testify; it is as true as Holy Writ; Dugald McNair don't lie, and Luther McCormick don't contradict, because according to Luther McCormick he got off the train, and so with regard to Cottingham, Cottingham only swears he got off, he don't say that he stopped.

Did he get on at the tank? The counsel for the State says if Phillips is to be believed. There is no one in the house asks you to believe the running of that extra train on that day; it may have run, but if there is anything certain in this moral universe, it is certain that the extra train did not run on that day; that is certain, for the railroad officials here swear to you that the records show to you that no extra train left on that day or came back on that day, and that this man Phillips was in the shop working; so if Phillips tells the truth, he is mistaken about that; if he has not lied about this extra train, then he is mistaken. But says one of the counsel, you know that these railroads are more particular about the shekels, that is, he means about the fares, than they are about the schedule, the date of departure and arrival of trains from their yards. In the name of the officers of the Cape Fear and Yadkin Valley Railroad, and of the Carolina Central Railroad, as good and as true men as ever lived in North Carolina, I deny any such a

charge; I do not know more high-toned, conservative men in North Carolina, I do not know men more careful of the lives of their passengers than these gentlemen, and they would rather lose all the fares than to sacrifice and endanger the lives of their passengers by letting trains come and go without taking any notice of it or making a record of it. The charge ought not to have been made against the gentlemen; the evidence does not justify it, the character of these gentlemen ought not to be aspersed here so before you. Phillips is not mistaken. And don't you recollect, says these learned counsel, learned in Scripture perhaps as much—judging by their arguments—or more than they are in law. They tell you that the Scriptures are proof, that the four Gospels of the Apostles are proof, on account of the different versions and descriptions of Christ—and I hope that God may forgive me for using that name in connection with anything that I may have to say of Phillips—they say that it is proved by the differences; well, then, if this is so, the testimony of Daniels, this Insurance Agent, that is written by his apostles, Phillips, Lizzie McCoy, Fannie Mears and the balance of them, will be orthodox in the extreme. Listen at them. Lizzie McCoy says that it was McDougald sitting on the sill at the water-tank, and he was well dressed, she knew him. What does Phillips say? He looked like a tramp. Then if you prove things by differences that is right. One says he was well dressed, and another says he looked like a tramp. Is that an unanswerable argument that he was the same man? Phillips said he looked seedy like a tramp, and they say that Phillips told the truth. The Solicitor is not going to take any different position from his three counsel who have preceded him, except that he is not going to ask you to believe that man; with all that is said about that man, he has not the heart nor the will nor the mind to do it.

What else does Phillips say? If, as the counsel who addressed you say, Phillips tells the truth, then the railroad men tell you Phillips was mistaken in the extra running. Phillips tells you that he saw McDougald standing on the platform of Lockamy's train at Red Springs, sitting on the platform at Red Springs; if he did, then Lockamy's train did not run on the 21st; it was some other day than the 21st that Phillips, Lizzie McCoy and Lockamy saw McDougald; if they saw him there, there can be no doubt about that. That must satisfy you, gentlemen, of this discrepancy beyond a reasonable doubt.

Now, gentlemen, here is another fact. If we satisfy you, gentlemen, of any one fact inconsistent with his guilt, it is your duty to acquit him. I know, I believe, that the court will tell you that, because it is right. On the 21st, between Wakulla and Red Springs, was McDougald on that train? I tell you, if Rufus F. Devane is to be believed, he was not. He does not give you a description of that duster, but he tells you that the man he saw on the train there between Wakulla and Red Springs was taller than McDougald; that he was not like McDougald; and, looking at him now, he would say it was not McDougald, that he was of a darker complexion. "But," says the counsel, "did he have a beard?" Trifles light as air, they are asking the blood of this man for Do jailers furnish razors? Are jails barber shops? Suppose every prisoner was furnished with a razor, how long would he stay in prison? And here, because his beard has grown naturally, he is to be hung. If Rufus DeVane's testimony is to be believed McDougald was not on the train on that day. He is a gentleman of high character; he is a gentleman of intelligence, and he is corroborated by this girl Sallie Wilkes before the investigation at Mill Prong; she tells you that he was taller than Sim. Conoley, and Sim. Conoley was much taller than McDougald. He is corroborated by the old lady, Effie Conoley; she tells you that the man was taller than McDougald. Three witnesses, gentlemen, who swear that he was a taller man, that he did not have the build of McDougald. Are you not satisfied of it? Who contradicts it? And, gentlemen, if this testimony that the State relies on here is unnatural, is unreasonable, it is your duty to reject it, and I think the Court will tell you so; he may not in those words, but in substance, for I doubt not it is the law of North Carolina.

Now, I ask you if there is anything from the beginning to the end that is not the most unnatural and unreasonable that a sane man could do? Do you believe, gentlemen of the jury, that outside of the mad house there ex-

ists a man that would perpetrate this murder, walk in the dead hours of the night to Campbell's bridge, take off the clothes in which he did the murder, and leave them there in a public place, go three-quarters of a-mile to the house of a man that he knew and wash the black from his face. I ask you if any man outside of the mad-house would do it? I ask you if it is not the most unnatural, the most unreasonable, proposition to submit to a jury of sworn men and ask them to believe it? Is it natural that one committing murder would walk fourteen miles to a public place, where there was a mill and store within eight feet of the public road, pull off the clothes that he had murdered the man in, lay them down there so that they would be seen by every one, go to the house of this perjured villain, Gillespie, wash his face, look at him, and then go to the town of Maxton in broad daylight? Never. No, gentlemen, never; he did not do it. The very face of the testimony is unreasonable, unnatural. If it were McDougald that was at Shandon—before God I tell you that the evidence casts that aside—but if it were he do you believe that in that one mile and a-half that he walked, openly seeing every one, he then stops and blacks himself, and as my young friend, Mr. Shaw, who preceded me, tells, that if he blacked himself with lampblack it was an impossibility, because there was no water. The Solicitor cannot account for it; you cannot use lampblack without water, and if he had water in his valise in any vessel, is it not natural to suppose that it would be at Campbell's bridge, if he put those clothes there? It is not reasonable, it is not natural, it is not probable. Did those clothes belong to McDougald that were found at Campbell's bridge? You cannot say that they did. They have tortured testimony in every way, they have twisted it in every way, but they cannot do it. The history of those clothes first begins according to the State's testimony with Jim McBryde. As he went to Wilmington McBryde tells him that some clothes have been found there, and that it is highly important that he should get them and take charge of them because it might give some clue to this killing. Now, upon the advice of McBryde, he, then being on the train to Wilmington, immediately goes back home and goes after the clothes. Does he act like a man that the clothes belong to? No. What does he do? The State would have you to believe in an unfair argument here, that he went there and tried to hide the clothes. Gentlemen, before he got there he went by the house of McKoy McKinnon. I know him, a good man he is; some man referred to him here as being from Maxton—an injustice to that man—I want to tell you, he does not live in Maxton, he lives in the county of Richmond, and we are proud that he lives there. What does he tell you? He tells you that this man came by his house and told him he heard those clothes were there and he was going for them. Does that look like hiding the clothes, going to the house of such a man and voluntarily, without being asked, tells him where he is going, and when he gets back takes them out of the box of his cart and shows them to him? Does that look like hiding? Not a bit; oh my! "man's inhumanity to man!"

Did you see that man Currie come here with a cold-blooded intention of fixing guilt upon this man, undertaking to swear to the color of the clothes that he had worn when he had not seen him for two years. "Man's inhumanity to man." Had not seen him for two years, and asks you to believe that he wore a gray suit of clothes. But these lawyers, these insurance lawyers, these lawyers with the dollars of that infernal corporation rattling in their pockets come here and seek to claim the life of this man McDougald. Robbins says that he thinks he had a suit of gray clothes some time ago. Robbins was mistaken about the duster; he was positive that he had worn the duster at the concert. Robbins was mistaken; if you had believed Robbins this poor boy might have lost his life; now he says that he had gray pepper-and salt pants; mistaken as to the duster, could he not have been mistaken about this? As he made a serious and dangerous mistake about the duster, could you trust him as being infallible about McDougald wearing the pepper-and-salt pants? But this man does not stop there; he brings up his partner, Robert Phillips, than whom no better man lives; Robert tells you that he never wore a gray suit of clothes, that he wore a blue suit in the

week and that he had a black suit for Sunday. Nobody that saw this mysterious personage said that he had on a pepper-and-salt pair of pants; everybody that saw him spoke of him as having dark clothes; and in the great endeavor of the State to prove whose clothes they were, they would ask witness after witness as they piled them in, what kind of a habit did he have, trying to get out of those witnesses that he had a habit of wiping his pen on his pants; the men that had seen those clothes were men of character, good men, and they would not lie. If it had been old man McLauchlin upon the stand, he would have stated that it was his invariable habit of wiping his hands to pull off his pants, and wipe them upon them. Now, so much for the pants. It was not in evidence that the man who was seen in these various places had on gray clothes.

But there is another matter connected with this identification of these clothes. They prove that, between the 17th of March and the 15th day of April, McDougald bought a package of lampblack from Dr. Graham; you recollect Dr. Graham's testimony, they asked him a question if he had not told him that he bought it for a man by the name of Charlie Wicker, that Wicker wanted to use it in a concert at Rowland; did they prove that, gentlemen of the jury? It would have been a circumstance; it may be fair for these men who are working here for money, they may excuse themselves for arguing that, but the impartial officer that represents the commonwealth here in this prosecution is not justified in arguing to you that he bought it for any such purpose when he withholds from you the testimony of Charlie Wicker? The proper inference for you to draw, and that he ought to tell you, is that Charlie Wicker would have corroborated Dr. Graham; Charlie Wicker was here. Now, gentlemen, it was unfair to you to bring Charlie Wicker here and not allow him to testify before you, and the proper inference for you to draw is that if these gentlemen had put him upon the stand he would not prove that which they propose to prove is true. There is another circumstance, gentlemen of the jury, that cannot be wiped out. They come and in strong language talk about the loss of these clothes, and insinuate here that McDougald was instrumental in losing them himself. Well, now, gentlemen, there is one thing that, if we had it here, would throw great light upon that matter, and that is the blacking that was left in the cart at John Conoley's; that was not lost, that package of blacking is traced to the possession of this prosecution. Hector McNair, as a witness, testifies this insurance man took it away. Mr. Solicitor, give me that blacking, give me this package of blacking; do not withhold it here and say it was the blacking that was found at Campbell's Bridge; let me bring Dr. Graham to see what brand was on it; let it be proved to the jury that it was the same brand as the blacking that he bought. This lampblack, gentlemen, as you all know, is sold by the ounce; if there is no brand on it, let me prove here to this jury whether it was the shape of the blacking that Dr. Graham sold, whether it was the shape of the blacking that was found at Campbell's Bridge. As they withhold from you, gentlemen of the jury, this package of blacking, it is unfair, and it does not lie in their mouths to say that it is the same that was found at Campbell's Bridge. Is not that so? You see if it were here, and they have got it according to this testimony, it would throw light upon this matter, but they withhold it, although poor McDougald's life may be forfeited; well it is not here, although they took it from poor John Conoley's.

Now, gentlemen, I am tired, and I know you are; I have not discussed near the whole situation, but I think you will not need me to refer to everything. Now they ask you, gentlemen, to find here, from the description given by these various witnesses of the appearance of this man down the road, that it was McDougald; they ask you to do that, gentlemen, in the face of the testimony and the mistakes made by McMillan and by Robbins and by Rich. None of them saw him alike; why at that concert that they relied upon so much, at Laurinburg, these three men said that he wore side-whiskers; Phillips and McGann, the men who dressed him, and the men who acted with him, tell you that he wore a beard all over his face. How uncertain, how unsafe is this testimony? Some of the witnesses on that road tell you the man that they saw had on a beard, even as long as

this; some tell you that he had a moustache; some tell you that he had side-whiskers; some that he had none. Some tell you that he had a light-colored duster; some tell you that he had a dove-colored duster; some tell you that he had a mud-colored duster; and applying the Scripture as laid down by Daniels and the apostles, Phillips and Lizzie McCoy, they ask you, on account of these great differences and discrepancies, to find that it was McDougald. That is the argument.

Oh, but they say he fled. It is hard to account for the operation of fear on the human mind, hard to account for that conversation lightly spoken by Duncan McBryde—for McDougald at the time said very little in regard to it—that Millard Moore was trying to fix the crime upon him. Millard had enmity for him; you know he had a deed for that land, and he thought, "If Sim. Conoley was out of the way, I have got that deed, and if I can get Dan. McDougald out of the way the land is mine." When the clothes were lost that night the simple, kindly, trustful nature of McDougald takes alarm, and the further he goes the more he hears. Livingston tells him he will be one of five to hang the man; here is Millard Moore manufacturing testimony; the air becomes filled with rumors of lynching; it is rife in Maxton, it is rife at Laurinburg. He starts to see his lawyers and he is told by Livingston that he is ready to lynch him, and you say that he did not act wisely? I tell you gentlemen, when that man Crowson went up there to attack this man McDougald, if McDougald had not have told those people a tale that would satisfy their blood-thirsty craving for his life he would have swung in the town of Maxton as sure as the sun ever shone. There is but one thing that might have prevented it, and that is the hands of those men that gathered arounds the depot to save him. You may say that you are brave and courageous, but, gentlemen, you do not know, you do not know how you would act when an infuriated mob threatened to lynch you, and you do not know when it is started by such a man as Millard Moore. This flight may be attributed to many things; you can not tell how these things operate upon the human mind.

Can you, gentlemen, be satisfied that this testimony is natural, that it is reasonable, that it is certain? Gentlemen, do you tell me that you find here that it is natural and reasonable for a murderer to have walked to Campbell's Bridge and have left those clothes there? Do you tell me that it is natural and that it is reasonable that he would walk the broad, public road, after the sun was up an hour high, to the town of Maxton, and never be seen by a human? Do you tell me that it is reasonable, do you tell me that it is natural? If it is not, it is your duty to say "not guilty." Do you tell me, gentlemen, that it is natural for a man in his senses, an intelligent man, to ride down in a railroad train to the town of Shandon, get off there in public view, seen by every one, walk the public road for a mile, seen by everybody, and then disguise himself and go to these places? Is is natural? And then commit this crime and walk back? As I say, no reasonable person did that. If that is so, and the theory of the State is true, then human nature is a lie.

They say that McDougald tried to rub out the steps; these tracks were about ten inches long and he wore No. 8 shoes; when you go home and measure the length of a No. 8 shoe you will see that they would hang him upon false testimony, for if their length was that of a No. 8 shoe it was over eleven inches. Poor Wilkes, it was bad in him to come here after being with that detective to endeavor to take the life of this poor man, but it was not as corrupt and mean as it was in him to suborn the testimony of his own child and make her swear differently here from what she did at Mill Prong.

Gentlemen, it is not worth while for me to discuss motive in this matter. It has been ably discussed by the other counsel and, I can say, given up by the prosecution. The last counsel stated that the motive was that when Lizzie Conoley was paid the $5,000 she could pay him back the amount of the mortgage that he paid Mr. Thomson. Well, if that is not the most—I don't know—isn't it the most? They had Mr. Thomson here; I do not know him, but I suppose he is a good man; why did they not put him on the stand and

let him tell you that that mortgage was only $100; that McDougald paid out $239 when he was only in debt $100? Why don't they do it? God knows, I do not. But there is another thing that I almost forgot, that is this plot, *this plot*. Gentlemen, if there was nothing else in this sad case but this plot, spurned and trampled on by the counsel for the State after its introduction, proved by the State's witnesses that it is false, and poor old McLauchlin, brought here for the purpose of establishing that plot, swears first that it was true and sticks to it that it was a true representation of that locality there. Did they introduce McLauchlin, in cold blood, to come here and swear as he did? That is left for the future to develop. That he did it is beyond any dispute, and it is admitted by the State, their own witnesses swear, that this house kitchen that McLauchlin swears was beside the house was some thirty yards to the east; that in no manner nor shape is that plot true, and no counsel for the prosecution has dared to hold that plot to the jury as true. I speak it before high Heaven, that, seeing here in this case this false plot attempted to be established by false testimony, is a matter that ought to satisfy you of this prisoner's innocence. There is another plot, gentlemen of the jury, that ought to be here, and it is the malicious plot that has been woven by this Insurance Company and its money to manufacture the testimony of this prosecution. We are not allowed to bring in here the conduct of that detective; it may be the law, gentlemen, but God knows it is not right, and it is not fair to this boy that this murderous plot should not be exposed. Tell me with all this unnatural testimony, these unreasonable statements, that you have not a doubt, that this man's life must be taken, that you can not say that you are uncertain!

It is said, gentlemen, or has been said, that when the Almighty formed a conception to make man that he called into his council his three favorite spirits, Truth, Justice and Mercy, and asked if man should be made. Truth replied, no, that he would attack his neighbor and that he would take up a reproach against his neighbor; Justice replied. no, that he would violate Thy righteous law; Mercy replied, "Make man, oh Lord; I will go with him, I will be with him through life, and when he appears in Thy Court above I will intercede for him." In your hands, gentlemen, I commit your brother man. Deal with him as you expect this great Spirit of Mercy to deal with you when you are called to that higher court above to answer to your God. You have been told, gentlemen, that when the State closes, and the Judge shall have discharged his duty and delivered his charge, that nothing will stand between this poor boy and death but you. It is true; it is true; and I beg you, gentlemen, when you do retire with that fearful responsibility, that you make no mistake. The mistakes of this life are not corrected beyond the grave; if you have a doubt about the unreasonableness of this testimony, if you have a doubt that it is unfair, if you are satisfied that R. F. DeVane was on the train between Wakulla and the Springs on the 21st, then your verdict must be "not guilty." It is your duty.

There is something in this case that ought to drive away the doubt from every juror who has a heart that is not one of stone; it was the meeting between this poor boy and his old grandmother, such as I have never witnessed, when on bended knee he kissed those palsied hands, and the tears of the old grandmother, tears so refined and so clear, so limpid and so meek that they would not have stained an angel's cheek fell on that darling boy's cheek. I tell you, in the presence of the Being, in which I know I always am, and in all reverence, that no such meeting could have taken place between the murderer and the mother of the man that was murdered. Never, never. Now, gentlemen, with this unreasonable testimony, this testimony with so many contradictions, so much uncertainty, can you say that your minds are freed from painful anxiety; can you say that your minds are freed from sorrow? This boy's life is in your hands, and if you cannot say it, if your mind is not free from uncertainty and if it is not free from doubt, it is your duty to give him the benefit of that doubt—this poor boy! And I trust, gentlemen, that that Great Spirit may so guide you, may so aid you about this testimony that you may come in here and answer the prayers of this poor old gray-haired father, this weeping mother with her heart bleeding at every pore, and say to them "not guilty!"

FRANK MCNEAL, ESQ., SOLICITOR—FOR THE STATE.

FRANK McNEAL, ESQ., of Rockingham, N. C.

May it please your Honor and Gentlemen of the Jury:

It now comes my turn in this important trial to discuss the evidence and to help you if I can to ascertain the truth of this matter. It is proper, perhaps, as so much has been said about the connection of the Insurance Company with the prosecution and about thirsting for the blood of the prisoner at the Bar, that I come to the discharge of the duty now before me free of any bitterness towards the prisoner or his counsel, or anyone else, that I come here for no purpose of resentment towards counsel who in heat of debate have said some harsh and unwarranted things. I would feel that I was unworthy of my position if I were to devote the time allowed me in this house to any other purpose than that of discussing the evidence and aiding you in coming to a proper conclusion. I come, I humbly trust, in the fear of God, and looking to Him for strength and guidance.

Now let us come "to the law and the testimony": On the night of the 21st of last April Simeon Conoley was murdered, most foully and brutally murdered, within one hundred and fifty yards of his own home. He was the uncle of the prisoner at the Bar, and we have the prisoner's own account of the circumstances of the murder. He told Rev. Mr. Lyon, D. D. Livingston, James McBryde and G. S. McMillan and others how it was supposed to be, and is in substance as follows: That it was supposed to be a white man disguised as a negro; that he called himself Lum Johnson; that he came up to the gate where deceased lived and asked if that was where John Wilkes lived, and asked deceased to go and show him the way to Wilkes'; that deceased, who had just eaten his supper and bathed his feet, told him he would go and show him the way as soon as he could put on his shoes; that deceased did put on his shoes and lead the way towards Wilkes', the man Lum Johnson following; that when they got about one hundred and fifty yards from the house where Conoley lived Lum Johnson shot Conoley in back of head and then shot him after he was on the ground; that it was supposed from the tracks that the man intended to kill Conoley by waylaying him on the road as he returned from his work to his home that evening, but that Conoley passed along before the man got to the place, and that after waiting for some time he went up back of the house and tried to shoot Conoley from through the window, and failing in that called him out as above stated. In reply to question of Mr. Lyon, whether any of the family saw the man, he said yes, his aunt and little boy Edwin saw him. This was the version of the matter that was given by the prisoner himself. So that the question for you to decide is, whether from the evidence in this case you are satisfied beyond a reasonable doubt that the man who called himself Lum Johnson and murderer of Conoley is the prisoner at the Bar. There can be no doubt but that it was a disguised man—a white man disguised as a negro—all of the Conoley family thought so, and in proof of this John A. Conoley, the brother of Simeon Conoley, took out warrants before D. E. McBryde, J. P., for two white men, Millard Moore and one Purnell, and N. A. McDougald, the brother-in-law of Simeon Conoley and the father of the prisoner, took out a warrant for John Kelly, another white man,—all of these warrants being issued on the 29th of April, about one week after the murder. So foul a murder caused the neighborhood to be stirred from one side to the other. Every citizen was shocked beyond expression at the horrible murder. Every man felt called upon to investigate and ferret out the inhuman crime and ascertain if possible who did it. Miss Sallie Wilkes told that she saw a strange looking man on the afternoon of the 21st of April about one-quarter of a mile of Sim. Conoley's going in that direction. He was black and had on a duster and slouch hat. John Conoley, colored, told that he saw a man

that same afternoon coming from towards Shandon and going in the direction of Sim. Conoley's and about two miles from Conoley's, that he was a black-looking, curious man; that he wore a duster, wide-brim hat and spectacles, and had someting strapped on his back; that he spoke to him (John Conoley) and called him boss and asked him if his dog would bite, and the way to Fayetteville, etc. Neill Smith told that he saw a man pass his gate about 2 o'clock of the afternoon of that day coming from the direction of Shandon and going in the direction of Sim. Conoley's, that he wore a long duster and had bundles and long hair; looked like a painted man; had his hat pulled down on one side next to witness; that he did not speak; that he wore spectacles and whiskers and was a man about the size of the prisoner; that he thought the man had on a wig. This was two miles from Shandon and about five miles from Conoley's. Mrs. Humphrey told that she saw a man pass her house, coming from the direction of Shandon and going in the direction of Sim. Conoley's and by Neill Smith's, about one and one-fourth miles from Shandon; that he was a black-looking man of slight build, wore a duster and had bundles, looked like, tied up in an oil-cloth; had whiskers and spectacles. Henry Smith, colored, told that he saw the man between Mr. Jeff. Cobb's and Mrs. Humphrey's, coming from the direction of Shandon and going in the direction of Sim. Conoley's, and that he wore a duster; was all blacked up, but he saw white spots on the back of his neck and on his hands, and told Mr. Jeff. Cobb, whom he met immediately after, that that was a painted man. Fannie Mears told that she saw the man between Mr. Jebb. Cobb's and Shandon, coming from the direction of Shandon and going down the road towards Mrs. Humphrey's; that he had a duster and "toted" a valise; was awful black-looking; had long hair and moustache and side-locks.

Mr. Jeff. Cobb told that he was a short distance from the road leading from Shandon to Sim. Conoley's and that he saw a man with a long duster and packages passing the road about 1 o'clock coming from the direction of Shandon and going in the direction of Sim. Conoley's—this was about one mile from Shandon. Mr. Cobb also told that he saw Fannie Mears and Henry Smith meet the man and that Henry Smith came right to him and told him that he was a painted man; that he saw white on the back of his neck and on his knuckles. This stranger, who was not recognized by anyone who saw him and who was thus traced to within one-fourth of a mile of Sim. Conoley's on that day, becomes an object of the greatest interest in that community. Who was he? Where did he come from? These are the questions asked by everybody, and these are the questions which present themselves to you, gentlemen of the jury, and which you must decide. Neill Smith, a public-spirited citizen, a kind and obliging neighbor, whose cool, clear head and whose brave, manly heart would be a blessing to any community, with his neighbors and friends, all conclude that this mysterious stranger must be investigated and traced up if possible. Accordingly investigation is started. Where was the stranger first seen? Near Mr. Jeff. Cobb's, one mile from Shandon, coming from direction of Shandon. What time of day? About 1 o'clock. Inquiry is made at Shandon, but no such man was seen there; no such man was seen or could be heard of anywhere else in the community. It was about the time of day that the freight train from Maxton to Fayetteville on the C. F. & Y. V. R. R. passed Shandon. Did this strange-looking man come on the train? W. C. McPhail, Esq., who was agent at the depot at Shandon, told that he saw a man leave Shandon going up the road immediately after arrival of freight train wearing a long duster; he was 30 yards from him and did not recognize him; he was going in the direction of Sim. Conoley's and on the road by Jeff. Cobb's, Mrs. Humphrey's and Neill Smith's.

Charlotte Dumas, a colored woman, who lives at Shandon, saw a nice-looking man with long duster, and had a grip-sack, going in direction of W. C. McPhail's; he was walking down the railroad, and immediately after arrival of freight train and on the day Sim. Conoley was killed; he was a stanger to her; was a white man. What become of this white man? Jeff. Cobb, Fannie Mears, Henry Smith, Mrs. Humphrey and Neill Smith were all on the road upon which he started from Shandon and about the time of

day that he would pass leaving Shandon at the time he did, but none of them saw the white man. What became of him? He disappeared between Shandon and Jeff. Cobb's, which places are about one mile apart. Remember just here that about half of this distance is woods, the other half is cleared. Now this is something the community cannot understand. A white man with duster and grip-sack start up the road—a public road—that leads by Jeff. Cobb's, Mrs. Humphrey's and Neill Smith's, in the direction of Sim. Conoley's, and no one sees him afterwards—but a black man appeared in his place—a *painted* man, in the language of the witnesses, so that the trace becomes more and more interesting. Nobody saw this white man at Shandon except Charlotte Dumas and W. C. McPhail, and they saw him, it will be remembered, just after arrival of freight train, about 12 or 1 o'clock, so that all concluded the man must have come on that train. Who was the conductor? W. O. Lockamy was the conductor, and he is interviewed by the neighbors and friends of poor Simeon Conoley. Did you have any passenger or passengers on your train that arrived at Shandon on the 21st day of April about 12 or 1 o'clock? Yes, one. Who was he? Who was he? Capt. Lockamy told that the man was a stranger to him; that he got on the train at the water-tank near Maxton, on C. F. & Y. V. R. R.; that he had some kind of bundle and a duster. The man said he wanted to go to Shandon. Capt. Lockamy told him that he had better go on passenger train; that the passenger train would pass him at Wakulla, that he would get there earlier, but the man replied that he was not in a hurry and he wanted to go on the freight train; that he got on board, paid his fare to Shandon and had but little to say—looked down on the floor. Capt. Lockamy rode in car with the man to Wakulla, the second station from Maxton, and then went on his engine until after they got to Shandon, as his duties required, so that he did not see him any more.

Mr. Rufus DeVane got on Capt. Lockamy's train that day at Wakulla, and found only one passenger. This passenger was a stranger to DeVane, but talked to him about business at Red Springs, and about how long the train would stop there, and DeVane told him that he was good for half a day on the train, though DeVane did not remember whether he told him where he was going or not. DeVane says now, after looking at the prisoner, that he cannot swear that he is, or is not, the man; that the prisoner does not look like the man he saw; that the prisoner has whiskers all over his face, and the man he saw had only a light moustache, etc.; that he never saw the man before that day. So that the question becomes more and more interesting, who is the man? Did anybody see him get on at the water-tank at Maxton? Mr. K. H. Cole is Section Master on the Cape Fear and Yadkin Valley Railroad, his section covering that portion of the road by Maxton and for some distance on both sides. He told that he was at his work on that road about one hundred and fifty yards from the water-tank on the morning of the 21st of April; it was before the freight train passed. A man—a stranger to Cole—came up and asked him what time the Fayetteville train passed, would it stop long enough at the tank for him to get aboard? The man had a duster, valise and bundles; he had only a moustache, no other whiskers. Mr. Cole says that he can't swear positively that the prisoner at the Bar is the man he saw that morning, but his best impression is that he is the same man. Mr. Cole asked him what his name was, and the man said McDougald; where he lived, and he said at or near Laurinburg. Mr. Cole then asked him if he was related to Capt. McDougald, of Cumberland, and the man replied no. Now, it is possible that Mr. Cole might be mistaken about the identity, there were other McDougalds at Laurinburg, and he only had a short conversation with him; the man only had moustache then and has whiskers all over his face now, and Mr. Cole has not seen him from that day until he saw him in custody at Lumberton a few weeks ago; but Tom Smith, colored, testifies that he was pumping at the water-tank that morning, saw the man talking to Mr. Cole, and that he came right on to the water-tank and got on Capt. Lockamy's train. Remember that. Did any one else see him? Yes, Lizzie McCoy, a colored woman who lives near Laurinburg, told that she saw Mr. McDougald at the water-tank that morning, and that she knew him, had known him since she was a girl.

You may assume, gentlemen of the jury, that her character cannot be questioned, because it has not been, with all the diligence of the prisoner's counsel and his friends; no one can be found who can say aught against her, so that you have her testimony uncontradicted and unimpeached to establish the fact that the man who got on the train at the water-tank at Maxton on the morning of the 21st of April was none other than the prisoner at the Bar. T. E. Phillips told that he saw the prisoner at the water-tank at Maxton on the morning of the 21st of April before Capt. Lockamy's train got there; that he he had known him for years and that he spoke to him and asked him where he was going, and that prisoner told him he was going over on the Cape Fear and Yadkin Valley Railroad, and that when the freight train, Capt. Lockamy's train, passed the engine that he (Phillips) was on at Red Springs he saw the prisoner on the car. But it is said on the other side that before an engine can leave the yard in Fayetteville it is the duty of the engineer to register the fact, and that it is the duty of the telegraph operator to record the time of the departure of the engine, and it is in testimony that the records of the Company do not show that any engine or special train was registered as leaving Fayetteville on morning of 21st April, and therefore you must disbelieve Mr. Phillips. Capt. Clark, one of the defendant's witnesses, says Mr. Phillips is a man of good character, and now the only question is whether you will believe the records or Mr. Phillips. As we will see further on, if you will allow the records to control rather than sworn testimony, you will have to discard the testimony of Capt. D. E. McNair. But if you discard the testimony of Phillips entirely, you have the evidence of Lizzie McCoy and K. H. Cole to establish this fact. Is there anything else? Why Capt. McNair and Horace Jones both say that prisoner left his home at Laurinburg on the morning of the 21st of April. Horace Jones said he had rubber coat on his arm and package wrapped in paper.

Now these witnesses say that prisoner did not stop at Maxton that morning but that he went on to Alma. Where is Alma? It is between Maxton and Wilmington, and two miles only from Maxton. What time did he get there? At 7:10 A. M. according to Capt. McNair, so that there is nothing inconsistent in this with the fact that he got on that train at the water-tank at Maxton, as the train did not pass the water-tank until 8:35 A. M., giving the prisoner one hour and twenty-five minutes to go from Alma to Maxton—a distance of only 2¼ miles. Mr. A. J. Cottingham told that he was at Laurinburg on morning of 21st of April and that he went down on freight train that morning to Maxton, leaving Laurinburg about 6 o'clock; that prisoner was one of the passengers on the train and that he had a duster and valise; that he, Cottingham, stopped at Maxton, and he did not know what became of the prisoner. But this is an important point in the case; is there any other evidence throwing light on the question? Mr. Luther McCormac, a man whose character has not been and cannot be impeached, says that on the morning of the 21st of April last, when freight train arrived at Maxton from Laurinburg, he went to the train; that he kept a boarding-house and went to see if there was anyone getting off, and that he met D. A. McDougald, whom he knew well, shook hands with him and talked to him, that he had a duster, valise and some bundles, and that he (prisoner) told him he was going over on C. F. & Y. V. R. R. that morning, and asked where he could leave his bundles until the train would arrive. There is no doubting the testimony of Luther McCormac—his character is too well established to be questioned even by the zealous counsel for the prisoner. Mr. J. B. Sellers and Mr. W. W. McGirt both live at Alma; they were both introduced as witnesses for the prisoner, and they both testified that they had never seen the prisoner at Alma before Wednesday, the 22nd day of April. The prisoner's brother, John McDougald, who has been here during this trial, and is now I venture to say, did not see the prisoner at Alma on the morning of the 21st; if he had you know he would have been anxious to tell you so. Now, if prisoner went to Alma that morning, what became of him? The evidence in this case shows, and unmistakeably, that he went back to Maxton and to the water-

tank and to Shandon. He told Luther McCormac that he was going over on that road that morning. Mr. Cole tells you that a man did go who said that his name was McDougald and lived at or near Laurinburg, and after seeing prisoner to-day, although he wears whiskers all over his face now—which, as I will show you further on, is part of his disguise—while he only had moustache then, that his best impression is that prisoner is the same man that he saw that morning, and Lizzie McCoy tells you he is the man. How can you doubt it? How can you find otherwise? But is this all? James McBryde saw prisoner on Friday after the murder. I hope, gentlemen of the jury, that you all know Mr. McBryde—it is a privilege to know him, honest, generous man that he is. Living twelve or thirteen miles from the place where this murder was committed, yet anxious to do what he could to find out who did it and to aid the investigation, he told prisoner that he would inform him of any information that he could gather concerning the murder, and on the Sunday following, having heard that it was thought that the man who got on the freight train at the tank at Maxton on morning of 21st April, went to Shandon and then up the road towards Simeon Conoley's, and disguised himself as a negro, was the man who murdered poor Conoley, true to his word he went immediately to see the prisoner to communicate the news to him, and told prisoner at his home at Laurinburg on that Sunday, 26th April, that the whole community believed that the man who got on the train at that tank that morning was the man. Mr. McBryde never dreamed that prisoner was the man, but expected and had a right to expect that prisoner would help to discover who it was that got on the train, so as to ferret out the murderer of his uncle. But what did prisoner say? "No, my father thinks he has the man spotted;" and, when asked by Mr. McBryde who it was, he replied "that he did not care to tell." If there was any doubt about his being the man before, I ask you if his conduct on this occasion would not remove it? But let us pursue this matter one step further: On Wednesday, 29th April, prisoner, with his uncle, John Conoley, went to Duncan E. McBryde's, a Justice of the Peace in Robeson county, to take out warrants for the arrest of Millard Moore and Reuben Purnell, charging them with the murder of Sim. Conoley; and after the warrants were issued Mr. McBryde, in a jocular manner, remarked to prisoner "they are about to put this crime on you; they say that the man who got on the freight train on C. F. & Y. V. R. R. at the water-tank at Maxton is the man who committed the murder and that you fit description of that man, and they say further that you attempted to poison Sim. Conoley some time last year;" and the prisoner replied "how is that? I can show where I was that day: I went to Maxton to rent a store and then went hom on the day train," all of which reply was a falsehood. He was at Maxton on Wednesday, the day after the murder, and went to Laurinburg on that day, but as has already been shown you, from the evidence in this case, he only passed through Maxton on Tuesday morning. Now, if he had not been the man, instead of stopping by saying that he could show where he was, he would have joined the friends of poor Conoley in finding out who it was that did get on the train at that place on that fatal day. But the warrants were issued, as has already been said, on Wednesday, and the trial of these parties, to-wit: Moore, Purnell and Kelly, was to take place on the Friday following, and where do you find the prisoner? At the trial helping the kind neighbors and friends of Conoley to investigate and ferret out this murder? Not he. You find him a fugitive, leaving his home and friends and telling falsehoods about where he was going and about some clothes as we shall presently see. In the face of these facts have you, gentlemen of the jury, any reasonable doubt about the fact that the prisoner is the man who got on that train at that water-tank on Tuesday morning, 21st April? Have you any reasonable doubt about the prisoner's guilt as charged in the indictment in this case? Gentlemen of the jury, you have been exceedingly patient in this case, and I know that you are very tired, and I promise you that I will not detain you much longer, but there are other matters to which I must call your attention. On Wednesday morning, the 22nd of April, the day after this awful crime was committed, some clothes were found at Camp-

bell's Bridge—they were found early in the morning before sunrise—an undershirt, pair of pants, old hat, package of lampblack, and pieces of looking glass that had been broken. Whose clothes were they? No witness has told you, either for the State or the prisoner, but several witnesses tell you they were found there. Hector Gilchrist testified that he was driving a wagon for Mr. A. M. McKinnon, and on that Wednesday morning went unusually early to feed his team so that he could make an earlier start, that he had to cross Campbell's Bridge, and that within 8 or 10 feet of the road he saw these clothes, they were on the ground near a raft of timber which was in the river. Now remember that this (Campbell's) bridge is between Sim. Conoley's and Maxton—about 14 miles from Conoley's and about 4 miles from Maxton. Hector Gilchrist went to the mill and told the hands there about it, and they all go to see the clothes; they put them in care of Geo. Blue, the fireman at the engine, and he hung them up in the oil-room; and James McBryde went to see them and other people went to see them, they were there on exhibition in the oil-room from Wednesday until Saturday. On Friday, 24th April, James McBryde boarded the afternoon train at Maxton on his way to Lumberton; he saw the prisoner on the train and went to him and asked whether he had learned anything about the murder of Sim. Conoley and he replied no, that Conoley was his uncle, but the prisoner did not seem communicative. Mr. McBryde assured him of his sympathy and that he would do anything he could to help him investigate the matter, and that he would let him know any information that he could get relative to the matter. Prisoner asked McBryde what people were saying about the murder —who was suspected? McBryde told him he believed Millard Moore did it, and prisoner replied that he thought so too, and asked McBryde, "can a man be convicted on circumstantial evidence?" Mr. McBryde told him that he thought so, and that some clothes had been found at Campbell's Bridge on Wednesday moning that were suspicious and might throw some light on the case, and that he, the prisoner, ought to go and get them. The prisoner went to Wilmington that evening, but as the train that he was on arrived in Wilmington the night train left for Charlotte, and the prisoner did not stop in Wilmington, but simply changed cars and went right back home. Mr. J. C. Mercer, who was in Wilmington on that Friday and who came up to Laurinburgh on that Friday night, saw him and came home with him. Prisoner's counsel say that he did not stop in Wilmington, but came immediately back for the purpose of going to Campbell's bridge after the clothes. I told you, gentlemen of the jury, that no witness had testified that those clothes were the prisoner's and that they were worn by him while killing Sim. Conoley, but I tell you now that there is one man here who did know them and who knows now—that man is the prisoner. If they were his and he wore them he would be anxious to get hold of them so as to make way with them, so that they could never be produced on any trial against him or anyone else. If they were not his clothes he would be anxious to get them and keep them and show them to everyone and have them at the trial of any person accused of the crime, so as to identify the party or throw light on the investigation—that is if he thought there was any connection between the clothes and the murder. Now what is prisoner's evidence with reference to the clothes? On Saturday morning he went to Campbell's Bridge after them. George Blue, who was fireman at the engine and who had charge of the clothes and had them hung up in the oil-room where they were unmolested from Wednesday morning until Saturday, had to go from engine to store after some leather just as prisoner was coming up. George Blue had seen the clothes hanging up in oil-room five minutes before he saw the prisoner. The prisoner come by the oil-room and was about there when George Blue returned. No one else had been there but the prisoner. When Blue returned prisoner asked him if he was the fireman? Blue replied that he was, and the prisoner asked him to see some clothes that he had heard were found. Blue told him they were in the oil-house and went to show them, and when he got there the clothes could not be found. Blue looked and looked for them and finally found them hidden under the oil-house. Wasn't this strange? How did it happen just as the

prisoner got to where the clothes were they were hidden? Did he do it? There was no one else there to do it, and they were there undisturbed all the time until he came. If he did hide them, why did he do it? Ask yourselves that question, gentlemen of the jury, because it must be answered. Well, he asked Geo. Blue what had they better do with the clothes? George told him to take them and he did take them. On his way back to Laurinburg Mr. McKinnon saw him and stopped him and asked him to see the clothes, and he showed them to him and remarked to Mr. McKinnon that the man who wore the pants had been plowing, but Mr. McKinnon told him he though they were finer than a plowman would wear. From that day until the next Wednesday no one ever saw the clothes. He had them at Laurinburg where his father and brothers and friends were, but showed them to none of them so far as the evidence shows. Is this the way he would have dealt with the clothes if they were not his? On Wednesday, the 29th of April, he claimed that he carried the clothes to his uncle John Conoley's. On his way there, at Antioch, he met Mr. H. H. Hodgin—as true a man as Robeson county or any other county can boast of, who was interested like all other good citizens in ferreting out this shocking crime, and Mr. Hodgin asked him if he had the clothes, and the prisoner replied yes, but did not offer to show them, and Mr. Hodgin remarked they are at Laurinburg, and to this prisoner made no reply. About that time Mr. H. E. Phillips came up and told prisoner that he wished he could see the pants, he might know them, whereupon the prisoner drove off without making any reply. Why this conduct on the part of the prisoner if they were not his clothes and he was keeping them for the purpose of using them to convict the suspected party? He claimed that he had them in box in his road-cart there, and Neill Conoley, his own witness and his own cousin, testified that when he got to John Conoley's they were in road-cart, and that he (Neill Conoley) saw them. After deceiving Mr. Hodgin as to where the clothes were, after virtually refusing to allow Mr. Phillips to see them, he carried them to his uncle John Conoley's, and there he left them in the cart in public road or near public road, and he and John Conoley went to D. E. McBryde's, as I have before said, to take out warrants for Moore and Purnell. But if Neill Conoley's testimony be true, unfortunately for the prisoner no one would steal the clothes until he returned; they were still there in his road-cart. You remember now that D. E. McBryde, Esq., had that same evening told prisoner that he was suspected of the crime, that the whole community was satisfied that the man who got on train at the water-tank at Maxton that Tuesday morning was the guilty man, and that he fitted the description of that man, and that it was said that he had tried to poison his uncle last fall. Certainly you would now expect the prisoner to guard zealously the clothes and keep them at all hazards, but no, he went back to John Conoley's and never looked after the clothes at all. One of John Conoley's son's called his attention to them, and then prisoner asked John Conoley if he thought they would be safe in buggy, and Conoley replied that nothing ever had been stolen there. Neill Conoley testified further that prisoner asked John Conoley if he might take the clothes in the house and that John Conoley said no, the man who wore those clothes killed Sim. Conoley and he might kill us, but that he might put them in barn or crib. These stories of Neill are somewhat inconsistent, but anyway the result of it all was that the clothes were left in the buggy, and when prisoner got up next morning he went to look for them and they were stolen. Who believes they were stolen? Is there a man of you twelve who believe it? His counsel says somebody else besides the prisoner had an interest in those clothes, that somebody hid them at the oil-house at Campbell's Bridge and shadowed the prisoner from the time he took them from there until he got to John Conoley's, then stole them. This is a far-fetched theory, it does indeed seem that it was the same man, but from this evidence are you not bound to conclude that the prisoner at the Bar was the man who did it on both occasions? But Moore, Purnell and Kelly were arrested and were to be tried on Friday, 1st of May. Where was the prisoner that day? Where would you have been, gentlemen of the jury, if your uncle had been

so foully murdered? You would have been at the trial and endeavoring by all proper means to bring out all the evidence and commit the parties if they were guilty. But where was the prisoner that day? He got on the train at the water-tank at Laurinburg on the C. C. R. R. and started westward. He met D. D. Livingston, deputy sheriff of Richmond county, and Livingston was surprised and told him he was; that he thought he was at the trial of Moore, Kelly and Purnell. Prisoner replied that he had business to attend to and could not go, and Livingston asked him where the clothes were and prisoner replied that they were in the office of his attorney, J. D. Shaw, Jr., and that they would be at the trial that day. Listen, gentlemen of the jury, this same man who told Charles Purcell, D. P. Johnson and others on Thursday that the clothes were stolen from him at his uncle John Conoley's, Wednesday night, 29th April, told D. D. Livingston on Friday, 1st day of May, that they were in the office of his attorney, J. D. Shaw, Jr., at Laurinburg, and would be at the trial. If you had any doubt before can you have any now as to the fact that prisoner made way with those clothes and that they were worn by him on that fatal night, and that they would have implicated him in that crime?

At the place where the clothes were found there was a broken looking-glass; from this it is probable that the party left the place in haste; if the prisoner, that he was frightened away. Now this brings us to another circumstance in this case. Edgar Gillespie testified that just after light on Wednesday morning a man came to his house—three-quarters of a mile from Campbell's Bridge and between it and Maxton; that the man was blacked; that the man asked for soap and water and a towel and he gave him soap and water; that the man's feet were muddy; that when he took off his hat he (Edgar) saw from his hair that he was a white man. After he had washed Edgar offered to give him a towel, but when he saw his face and saw that it was Mr. McDougald he put back the soiled towel and went to his trunk and got a clean towel. A day or two after that, and before anyone ever heard or suspected that the prisoner was the assassin, Edgar met Hector Gilchrist, and they were talking about the clothes found at Campbell's Bridge and how strange it was, and Edgar told Hector that a man blacked came up to his house just after light that Wednesday morning and asked for soap and water and towel, and that when he washed off it was the prisoner. But they say Edgar's character is bad and you must not believe him. A. M. McKinnon, the defendant's own witness, testified that Hector Gilchrist's character is good. How could Edgar have told Hector this story if it was not true, when no mention had up to that time been made of the prisoner's connection with the murder or the clothes? They say also that it is unreasonable that the prisoner would cross several streams between Sim. Conoley's and Campbell's Bridge without bathing, and that he would then let anybody see him blacked. The theory of the State is that the prisoner's plan was to make it known that there was a strange negro in the neighborhood; that no one could trace him, where he came from and where he went to. That it would all be a "mysery," as prisoner told John A. Currie that he didn't believe it ever could be found out. This is our answer to question asked by prisoner's counsel why prisoner would appear on such a public road as he did from Shandon to Sim. Conoley's, where he would be seen by so many people. He wanted the strange negro to be seen, and if he was seen at all after the murder he wanted to be seen as a negro. It would not do for him to wash off his disguise at the first stream, because if any one would see him he would have to account for himself, so that he wanted to appear disguised until he got as near as possible to Maxton, and then appear there for the first time Wednesday morning. But why did he go to this negro's house to bathe? The broken looking-glass and the clothes left so near the public road at Campbell's Bridge show that he left there in haste—that he was frightened probably by Hector Gilchrist, certainly by somebody—before he could bathe and put his clothes in the river or out of the way, and he fled, daylight was upon him and something had to be done. He saw this negro's house, it was ten or twelve miles from Laurinburg, and (as he thought) it was not

probable that the negro would know him, and, anyway, this was all he could do. Edgar Gillespie is not only confirmed by Hector Gilchrist as to this matter, where do you next find the prisoner? Capt. Powers said that when his train, the freight train from Laurinburg to Wilmington, got to Maxton at half-past six o'clock Wednesday morning that prisoner was there at Maxton, crouched up on the platform at depot, so that he is confirmed by prisoner's whereabouts—about three and one-fourth miles from where Edgar saw him. He is also confirmed by prisoner's conduct in reference to the clothes, which I argue established the fact that they were his; but I will not repeat. But what else? On Wednesday morning, 22nd April, as I before stated, Capt. Powers found the prisoner crouched up on a platform at depot at Maxton. He got on the freight train and went to Alma, getting there about 7 o'clock. Mr. Herring was on that train with him and told you that when he got off at Alma he appeared stiff and walked like an old man. That was a long tramp. Remember it was eight miles from Shandon to Sim. Conoley's and about eighteen miles from Sim. Conoley's to Maxton—a long, weary tramp in the dead of night, and if prisoner is the man who did it, he had cause to be stiff and "hobble" like an old man. Prisoner remained at Alma for two or three hours, saw his brother, John Sellers and W. W. McGirt. Remember, now, this was April 22nd, that these parties did not see him Tuesday, April 21st, and then he went to Maxton and then to Laurinburg. When Geo. Currie, colored, carried a note to Laurinburg to inform prisoner that his uncle was killed he found him at home with his shoes off in his shirt sleeves; that was Wednesday afternoon, he was "resting." After he got that note he went to James & McRae's store and asked his friend and daily associate, J. C. Robbins, for slippers and other things that indicated that they were for a corpse, and Robbins asked him whether anyone was dead. Prisoner replied, yes, man was killed on my place last night. Prisoner then told G. S. McMillan, who was clerk in same store, and his friend and daily companion, that he was very tired, that he (prisoner) had gone to Wilmington the day before (Tuesday, April 21st,) on the freight train and had come back Tuesday night on passenger train and stopped over at Maxton; but that there was something worse than that ahead of him, he had just had a note saying that his *tenant* had been killed the night before and that he had to go and see about it. Mr. McMillan asked him whether his tenant was white or black, and he said he was *white*. I simply call your attention, in passing, to the fact that he referred to him as a man, and as his tenant, and not as his uncle, but I call your attention especially to the fact that he said he was *very tired*. Is this denied? Is this contradicted? Zealous counsel for prisoner have done some reckless things, but they dared not to question the truth of the evidence of Mr. McMillan; his character is beyond reproach and you may take without any reserve all that he says and act upon it. What made him tired? That long tramp of eight and eighteen miles—twenty-six miles—would have done so, but what did prisoner say about it? Prisoner said he went to Wimington Tuesday morning on freight train. What? Yes, that he went to Wilmington Tuesday morning on freight train. Is that true? Prisoner was at was that time a man of high character, considered a christian gentleman. He not asked by Mr. McMillan where he was, but he volunteered to tell. What does prisoner's own witness say about it? Capt. McNair said he was conductor on freight train that Tuesday morning (21st April) and that prisoner did not go to Wilmington, but got off at Alma, and Horace Jones, Capt. McNair's brakeman, also said that prisoner got off at Alma. Now then why is this christian gentleman telling a falsehood about his whereabouts that day? But he also said that he came back on passenger train Tuesday night. Is that true? Capt. George Welsh told you that he was conductor on that train and that it is not true. Mr. Nehemiah told you that he was engineer on that train and that it is not true. Now then you are obliged to conclude that this christian told two falsehoods about where he was on that fatal day.

Prisoner also told this same falsehood at the burial of Sim. Conoley on Thursday to Miss Sallie Wilkes, Mr. John A. Currie and others. Remem-

ber, gentlemen of the jury, that a short time before this murder prisoner had been acting the negro at concerts—one at Laurinburg and one at Mason's X Roads; that he had been told he was a good actor and that his friends could not recognize him. Remember, also, that prisoner borrowed a wig and whiskers from J. C. Robbins about a week before this murder. It did not necessarily follow from this that he intended to kill his uncle, but remember it and remember also that J. C. Robbins called on prisoner for the wig and wiskers on Friday after the murder, and that he did not return either until Tuesday and then only the whiskers, and told Mr. Robbins that the wig had been lost. Remember, also, that the wig was red when Mr. Robbins gave it to prisoner and that it was combed out around the edges so as to make the hair appear straight and long. Remember, also, that Mr. Robbins told him how he could change or have changed the color of the wig. Remember, also, that there was a colored man near Laurinburg by the name of Lum Johnson, and that prisoner knew him and traded with him, and that prisoner said at poor Conoley's funeral that it was not Lum Johnson, that he was at his work, etc.

I have already talked to you longer than I expected and must ask your indulgence only a little longer.

Counsel for prisoner say that no motive has been shown for commission of this most unnatural crime by prisoner. Let us look at that for moment. A few years ago Sim Conoley's home was mortgaged. At the instance of Miss Lizzie Conoley, his sister, that mortgage was taken up by the prisoner at the Bar; his counsel say the amount was $100.00; from that time the prisoner claimed to be the owner of that land and that Sim. Conoley was his tenant; from that time he opened a farm account with Phillips & McDougald and Sim. Conoley as his tenant. That may have been the act of a dutiful nephew, and I do not ask you now to come to any conclusion against him because he lifted the mortgage on the farm and claimed the land as his own; but I want you to remember this: Sometime after that, on July 27th, he wrote this letter to Mr. McLean:

"DEAR SIR: Moore had Sim. and myself warranted for trespass on ten acres of ground. I examined and found it was a trespass of about a dozen boxes. I settled it with him by paying $5.00 and cancelling the amount. What I wanted to ask you was this: Moore claims a boundary deed over the land. Do you know of such a paper given by Sim. or any of them? I thought it was all bosh about such a deed; they all deny giving such a deed; but you know how they are, you can fool them to death.

Yours respectfully,

[Signed] D. A. McDOUGALD."

This did not necessarily mean that he, the prisoner, would fool them to death, but it showed that he considered them as easily reached, easily managed.

Now, on the 12th of last September Mr. Roper, an Insurance Agent, when in Laurinburg, called to see Mr. McDougald on business of insurance. Mr. McDougald told him that his uncle had been talking to some agent in Fayetteville about insurance on his life. If I can get hold of him I will get him into your Company. Shortly after this he (prisoner) wrote to this agent at Tatum, S. C., and asked him what would be the annual premium on $5,000.00 on Sim. Conoley's life? In reply to this card Mr. Roper went next day to Laurinburg. They calculated and ascertained what the premium would be and found that it would be $239.00 annually for twenty years. Prisoner then directed Roper to write up the application and leave it with Dr. Hamer; that Sim. Conoley would be examined by the Doctor, and application would then be forwarded to Roper. The examination was made and application was forwarded to Roper, and then prisoner wrote Roper as follows:

"You can send me the policy of insurance. I will remit. Mr. Conoley arranged it with me to remit, so you can send or bring it when you get it approved."

About ten days afterwards Roper and his partner went to Laurinburg, delivered the policy to the prisoner and received from him the first premium, $239.00. Now, just think of Sim. Conoley's circumstances, the evidence is that he was in straightened circumstances, that he had been working for wages, and carried his rations on his back, that he was unable to raise a $100.00 mortgage on his home, and that prisoner did raise it and then took his home for it. He was unable to pay $239 00, the first premium, much less the subsequently accruing premiums for nineteen years. Note also that Conoley was then forty-six years of age and in good health. Who contracted for this insurance? Who paid the first premium? Who took possession of this policy? Who was to pay the subsequently accruing premiums? Why, gentlemen of the jury, it was the prisoner at the Bar and nobody else. Was he able to do it? Was it reasonable that he would do it? The policy, remember, was in favor of his aunt Lizzie. The family at Sim. Conoley's home consisted of his grand-mother, eighty-five years of age, Miss Lizzie Conoley, the sister of Sim. Conoley, and her son Edwin. You can judge about their circumstances from the fact that they gave up their home for $100.00. Now, what was prisoner's condition? His property was estimated as worth from $3,000.00 to $6,000.00. Suppose it was worth $6,000, he would have been doing a very good business if he realized $600.00 net. Do you believe that he would have agreed, in good faith, to pay $239.00 per annum, very nearly one-half of his income at high estimate, for twenty years, if Sim. Conoley lived so long, without any interest in the policy, and as a gift to his aunt? Were you ever so much disposed to put a favorable construction on all of prisoner's acts, you must conclude that this is just a little too good. Follow me a little further and let us see: The policy was delivered to prisoner, about 20th of September. On or about 1st December following prisoner went to Sim. Conoley's and spent the night. His grandmother, his aunt Lizzie and her son Edwin were there. In the moning prisoner and Sim. Conoley left in a buggy together, and in a short time Sim. Conoley turned up at John Wilkes', a neighbors, and has some candy which he was eating. Very soon he became violently sick, had convulsions, and all the symptoms of poison by strychnine as Dr. Prince testified. But did prisoner poison his own uncle and so soon after the issuing of that policy? Yes. You have it from the lips of Dr. Prince, whose character as a physician and a man is as good as anybody's, that prisoner went into his office at Laurinburg one morning and told him that his tenant, meaning Sim. Conoley, had been poisoned by some brandy drops which he, prisoner, gave him, that he had learned this from a letter from his aunt. When Dr. Prince asked him some days afterwards to see the letter prisoner replied that he had lost it or mislaid it. Now, then, how did the strychnine get on the candy? Powell Hill told you that he was clerk in drug store at Laurinburg in December last and that he sold prisoner some brandy drops; that some days afterwards he came in store early one morning while he, Hill, was sweeping out the store and told Hill he wanted some candy, but would help himself; that he went back of the counter and to the box which contained the brandy drops. Hill was sweeping the store, but prisoner *fumbled* so long over the box of candy, which was on lower shelf and not far from floor, that Hill asked him "can't you get the candy?" Prisoner replied that he believed he would take some out of show-case, which he did. An hour or two after that prisoner went again to the drug store and found Dr. Everington, the proprietor, in and told him he wanted to buy some brandy drops. Dr. Everington told him that he had one box open, that was stale and he would open a new box for him, but prisoner replied that he wanted some out of the box that was open. When Dr. Everington put the box of candy on the counter prisoner took it and walked immediately to Dr. Prince, who was in his office in rear of drug store, and showed him white powder in one corner of the box and asked the Doctor what it was? While Dr. Prince was examining it, Dr. Everington, who did not understand prisoner's conduct, followed him in to the Doctor's office, and then prisoner left. Dr. Everington and Dr. Prince both say this substance was strychnine. You will remember that the conversation before

referred to between Dr. Prince and the prisoner, in which prisoner told him his tenant was poisoned, had occurred before that morning. Now then the question is how did that strychnine get in that box? Dr. Everington and Powell Hill told you that they did not have any strychnine in that form open in the store, that the only strychnine they had was in crystals, this was in powders; but they tell you further that they had before that sold out of that box of candy from one-third to one-half of it, and that nobody had ever been made sick. How did it get there? The theory of the State is that prisoner put it there while he was "*fumbling*" in that box that morning. On this point also remember prisoner's conduct when Duncan E. McBryde told him that he was accused of the murder, and that it was charged that he had poisoned his uncle last fall. He made no reply but fled the country as we shall see further on. But his counsel asks why did he tell Dr. Prince? Why did he show the strychnine? The answer is that this was his attempt to cover up the deed, if "Conoley and his family could be fooled to death." The grand jury might find it out, and anyway it had to be explained. It would have been a nice attention to his aged grandmother or his aunt Lizzie or to little Edwin to have given them candy, but instead of that he bestows it upon his uncle who was forty-sixty years old. That it was poison and that those who saw Sim. Conoley's convulsions knew it was poison is proven beyond all doubt by the fact that as soon as Mrs. John Wilkes saw Conoley she took all the candy that Sim. had not eaten and threw it in the fire. Now put this insurance and this poisoning together and form your own conclusions.

But his counsel say that you ought not to convict the prisoner because up to that time his character was good—no one in that country had a better character—and especially that you ought not to convict him because his aged grandmother testified that it was not the prisoner who killed Sim. Conoley; that she was in the house and saw the man pass ten feet from the door, and the wind blew his coat and that she could see his hips and his shape and that it was not the prisoner; the man was taller than Sim. Conoley, and that prisoner is not so tall. Now, gentlemen of the jury, if the prisoner's friends and daily associates could not distinguish him on the stage with lights when he was acting the negro, is it strange that this poor old lady would be mistaken? Dr. Lewis told that Mrs. Effie Conoley didn't see the man, that he asked all who saw and knew the man, that he asked all who saw and knew anything about it to tell it—that was next day after the murder. D. B. McLauchlin told you that she told him that she did not see the man, and now I ask you to remember that the prisoner, who had been to Sim. Conoley's after he was killed, had been there twice—at his burial and on Wednesday, 29th April—that he, the prisoner, told Mr. Lyon, on Friday, 1st of May, that no one saw the man but his aunt Lizzie and little boy Edwin. But, gentlemen of the jury, the prisoner at the Bar knew better than his aged grandmother whether he was the man who passed that door that night or not. Now let us examine him for a few moments only. Remember that Duncan E. McBryde told him on Wednesday, 29th April, after warrants had been issued against three other men charging them with this crime, that he, the prisoner, was suspected; that the man who got on train at that water tank was the man, and he answered the description, and that he was also charged with attempting to poison his uncle last Fall. Then what does he do? His character was good—has been spoken of in this trial as a christian gentleman—any of us might be proud to have such a character as he proved. Just because Mr. McBryde had jocularly made this remark to him he leaves home and friends for parts unknown, and travels and travels and travels and travels until he can travel no further—is at St. Louis; Kansas City; Washington, Kansas; Portland, Oregan; Albany, Oregon, and other places, peddling spectacles, and when arrested was a common laborer on a railroad section. Changed his name. Why, gentlemen of the jury, the name of D. A. McDougald was a good name, any of us might be proud of it up to that time; and he casts it aside and calls himself D. H. McLauren, a fugitive and a vagabond on the face of the earth. Can this be explained on any other hypothesis except that he was conscious of his guilt and afraid of the pun-

ishment that would follow? Can this conduct, considering the prisoner's relations to the deceased, his character and his surroundings at Laurinburg, be construed into anything else than a confession of his guilt. Answer it, gentlemen of the jury, as you must, solemnly, before God, and acquit the prisoner if you can in the face of this evidence. I beg you to do it.

Just before prisoner's flight, on Thursday, 30th April, the day after Mr. McBryde told him he was charged, in his desperation he wrote a note to Mr. A. F. Bizzell, purporting to be from his uncle, John Conoly's, asking him to go to D. E. McBryde's that night with 50 picked men, that he would be met; that Millard Moore, who was under arrest, would be there—a deliberate proposal to lynch an innocent man—a man who was imprisoned on that charge until a hearing could be had, when he was discharged, hoping in this manner to keep attention from himself. But Mr. Bizzell did not respond to this proposition, and this plan failed, and then, as a last resort, he fled. He knew that Moore, Purnell and Kelly would be acquitted, that it was only a question of time, that they would be acquitted because they were not guilty, and then he would be arrested and confronted by K. H. Cole, Capt. Lockamy and R. F. Devane, who would identify him then; that Edgar Gillespie would tell about his washing at his house; that he would be charged with making away with the clothes; that Charlotte Dumas would probably tell about seeing him at Shandon on that morning. He knew the whole community was straight on his track, and he fled. Counsel tell you that he was afraid of being lynched. He was the only person that ever proposed to lynch anyone, and that was an innocent man. His (the prisoner's) friends were saying that any man who would commit so foul a murder ought to be summarily dealt with, and he fled. Is not this a confession? And when D. D. Livingston told him on Friday as he fled that he, Livingstone, would be one of five men to hang the murderer, provided he was sure he had the right man, this adds to his speed.

Gentlemen of the jury, you are tired. I know you have been very patient in this investigation. I have discussed it very imperfectly, I know, because I too am worn out with it. It is an important and a solemn matter which you have to settle in this case, and no counsel could overstate the importance of it to the prisoner at the Bar and to the community. Poor Sim. Conoley was murdered, brutually, outrageously murdered, innocent, unsuspecting old man that he was, led from his house, as he was, and shot down and butchered by an assassin. His own nephew stands charged with the crime—his own nephew, when charged with it, fled, changed his name—his good name, and disguised himself. If you can, in the face of all this evidence, upon your oaths, say that you are not satisfied beyond a reasonable doubt of his guilt, why acquit him. But on the other hand you have a solemn duty to perform to yourselves, to your country and to your God. Do it faithfully; do it right.

Judge McIver's Charge to the Grand Jury.

JUDGE JAMES D. McIVER, of Carthage, N. C.

Gentlemen of the Jury:

The prisoner at the Bar is indicted for the murder of one Simeon Conoley, on the 21st day of April, 1891, in the County of Robeson.

Murder is the felonious slaying of any reasonable creature in being with malice aforethought, express or implied, in law. If the killing is admitted, or proved, beyond reasonable doubt, to have been done with a deadly weapon, as a pistol, the law implies the malice. It devolves upon the State to make good the charge to the exclusion of all rational doubt. The law presumes that the accused is innocent, and he is not required to prove anything, and his failure to offer any testimony or to become a witness in his own behalf, as he might have done, the law says, shall not create any presumption against him, and shall not be permitted to prejudice his case in the minds of the jury, the entire burden of proof of guilt being on the State. Proof of guilt may be by direct and positive testimony, or by circumstantial testimony; whatever of difference there may be in eliciting direct and circumstantial evidence, the conclusion reached must be the same; both alike must satisfy the minds of the jury to the exclusion of every reasonable doubt. This is the test of the sufficiency of evidence, whether it be direct and positive or circumstantial; if it falls short of this test, and the minds of the jury is left in doubt and uncertainty, the prosecution fails and the accused must be acquitted.

You are instructed, as a matter of law, that where a conclusion is sought upon circumstantial evidence alone, as in this case, the State must not only show beyond a reasonable doubt that the alleged facts and circumstances are true, but they must be such facts and circumstances as are natural, reasonable, clear and satisfactory in their relations, connections and combinations, and incapable of explanation upon any reasonable hypothesis other than that of the guilt of the accused.

You are instructed, that while the presence of a motive for the commission of the offense charged is a legitimate subject of inquiry, it is not an element of the burden of proof which the law devolves upon the prosecution; but if the evidence fails to show any motive to commit the crime charged on the part of the accused, this is a circumstance which the jury ought to consider in favor of his innocence.

If the State fails to prove beyond reasonable doubt any one fact or circumstance necessary and material to form the chain of facts and circumstances connecting the accused with the commission of the crime charged, the prosecution fails and the jury ought to acquit, or if there is any one single fact proved to the satisfaction of the jury which is inconsistent with the defendant's guilt, this is sufficient to raise a reasonable doubt and the jury should acquit the defendant.

If the jury believe the testimony of any of the witnesses who testified in regard to it, the character of the accused, up to the time of this charge, was above reproach. While this furnishes no excuse for crime, it is a fit subject for your consideration in passing upon the question of his guilt or innocence.

Circumstantial evidence is legal and competent, and in this case, if it satisfies you beyond a reasonable doubt and to the exclusion of every reasonable hypothesis other than that the defendant is guilty, it is your duty to say from your verdict that the defendant is guilty in manner and form as charged in the bill of indictment.

But if upon the whole case your minds are left in painful anxiety, doubt and uncertainty as to his guilt, it will equally be your duty, under the law, to give him the benefit of the doubt and say he is not guilty.

[Judge McIver at this point gave an exhaustive review of the evidence, (which is published in the first part of the book) at the conclusion of which he said :]

Now, gentlemen of the jury, this is the testimony as I have it. It is intended simply to aid you in recollecting what the evidence is; if you remember it differently from this, why you must be governed by your own recollection, not by mine. Now from this evidence the State says that it has proved facts and circumstances that lead to the conclusion, inevitably, that the prisoner at the bar is guilty as charged in this bill of indictment. It is argued to you by the Solicitor and his associates, that from this evidence it has been proved that the prisoner in the first place had a motive to commit this deed; it is argued to you that the prisoner at the bar had an opportunity to commit the deed; it is argued to you that the prisoner not only had a motive and an opportunity, but that he did, in fact, commit this deed. It is insisted that, some time during the month of September of last year, the prisoner procured a policy of insurance upon the life of Simeon Conoley, the deceased, of $5,000, to be issued, and it is argued to you, from the testimony, that the prisoner at the bar paid the premium of $239 on the 20 year policy. It is insisted that the prisoner paid this premium, and that soon after the issuing of this policy it is insisted that the prisoner attempted to take the life of the deceased, Simeon Conoley, by poison; that he bought candy, took it to this deceased and gave him the candy, and a few minutes after eating the candy he was taken violently sick, the symptoms indicating poison by strychnine; that the prisoner told Dr. Prince that he wanted him to examine this candy; that a tenant of his had been poisoned by candy that he had given him. It is argued to you by the State that if you believe the testimony of Mr. Cobb and of John Conoley, col., and the other witnesses who testify in regard to the same matter, that the prisoner was seen within a mile and a-half or a-quarter of the house of the deceased on the evening of the homicide and that he was there in disguise.

It is insisted that the prisoner left Laurinburg that morning on the 6 o'clock train; that he took the freight train on the C. F. & Y. V. R. R. at the water tank at Maxton; that he was seen there by Mr. Cole, by Mr. Phillips, and by a colored woman, Lizzie McCoy; that he was known to have left the water tank at Maxton on the freight train, that he was seen as far as Red Springs; that he paid his fare as far as Shandon; that soon after that train pulled up at Shandon, or soon after it stopped, a strange man was seen there in that community, going by Mr. Cobb's; that he was disguised; that he wore a duster, that he was about the size and answered to the description of the prisoner at the bar. If you are satisfied, gentlemen of the jury, beyond a reasonable doubt that the man who got on at the tank got off at Shandon, was seen in disguise going by Mr. Smith's, was seen in disguise within a-quarter of a mile of the house of the deceased; if you are satisfied beyond a reasonable doubt of the truth of that circumstance, of those circumstances, you are sworn, gentlemen of the jury, to say that the prisoner committed this deed.

The State insists that the next morning the prisoner was seen at the house of Edgar Gillespie, some 14 miles from the house of the deceased; that he was there with his face blacked; that he went to the house of Edgar Gillespie, procured water, soap and a towel and washed his face; that Edgar Gillespie knew him. It is insisted that the defendant then went to Maxton; that he made a false statement about his going to Wilmington and back the same day and night; and the Solicitor argues to you that in addition to all that, that the prisoner at the bar, soon after this charge began to be circulated against him, soon after it began to be known that the man who got on that water tank was the man who committed the deed, that the prisoner fled from a sense of guilt. The State argues to you that this

flight was from a sense of guilt; that the fact of his flight, taken in connection with other circumstances, fixes the guilt upon the defendant beyond all reasonable doubt. That, now, gentlemen of the jury, is the contention on the part of the State.

But the prisoner says, in the first place, that the charge against him is inconsistent with the character that he has always borne; says in the next place that, so far as this circumstance is concerned of his having left Laurinburg on the morning of the 21st and going to Maxton, while that is true, that he did leave Laurinburg and go to Maxton, he says it is not true that he was seen at the water tank at Maxton on that day; he says it is not true that he went to Shandon that day; he says it is not true that he was the man that was seen in disguise going on the Lumberton and Carthage road by Mr. Cobb and Mr. Smith. He argues to you that you cannot be satisfied of those circumstances beyond a reasonable doubt, because, in the first place, Mr. Cole, who says he saw him at Maxton, gives it as his opinion of this man that he is not positive about it; and about this testimony of Mr. Phillips, the engineer of the road, that Mr. Phillips was mistaken about seeing the defendant there on that day, the 21st, because he says he went there on an extra freight train, and it is argued to you that if you believe the testimony of the railroad officials here in this place, that Mr. Phillips was mistaken as to the day; that no extra train went out on that day. So it is argued to you that you cannot say that you are satisfied beyond a reasonable doubt that the man who got on at the tank got off at Shandon and was seen in disguise near the house of Simeon Conoley; that you cannot say from this evidence, that you are satisfied beyond a reasonable doubt that that was the defendant. That so far as the motive was concerned, it is insisted on the part of the defendant that the State has failed to show any motive. They say that while it is true that the prisoner paid $239, the first premium upon this policy, that while he did that, he did it at the instance of his uncle, Simeon Conoley; it is insisted by the prisoner's counsel that he did not procure the issuing of this policy; it is insisted that even if he did, that no motive could possibly spring from that, because the policy was issued to Margaret E. Conoley, his aunt, who had a child 13 or 14 years old; that she had a mother living, that she had two sisters living, and a brother living, one of the sisters being the mother of the prisoner, and that in no view of the case could the prisoner reap any benefit from that policy. That is the argument of the prisoner's counsel, and from that the prisoner argues to you that the State has failed to show any motive, and that in regard to the poisoning that took place a short time after that, the prisoner argues to you that there is no truth in that; that while it is true that Simeon Conoley was taken violently sick, possibly from eating candy, the prisoner denies, through his counsel, in the first place, that the candy was poisoned; that there was any strychnine in it, because it was said that if it had any strychnine in it that the deceased Conoley could not have been relieved by taking an emetic, if you believe the testimony of Dr. Prince, and that it did not make other parties sick who ate some of the same candy. And he argues to you furthermore, that if there was poison in the candy, his statement about it and his conduct all indicate that there was no purpose on his part, because they show that if he intended to poison him with the candy no one knew it but himself, and he is the first and only man who told that the deceased had been made sick by eating the candy. So the prisoner argues to you from that, that the State has failed to show any motive for his doing this act.

The State argues to you, as I told you, the circumstance of the prisoner's flight; if your are satisfied that he fled from a sense of guilt, that is a circumstance that the jury ought to consider against him. But on the other hand, you must be satisfied that flight was from a sense of guilt and not from a sense of fear. The prisoner insists that he fled because he was fearful that he would be lynched; he knew a great crime had been committed, people were incensed about it, and he had been accused by a man by the name of Millard Moore, a man he says he knew to be a desperate man; and according to the testimony he told his father that he had been accused o

that thing by Millard Moore and had been warned by Mr. Duncan E. McBryde that Millard Moore would saddle that thing on him if he did not mind, and knowing the character of Millard Moore, rather than get into a law suit with him, he would leave the country. He insists that is why he left.

Now, it is for you to say, you must be satisfied beyond a reasonable doubt that he left through a sense of guilt; he says that he left through fear, and if you have a reasonable doubt upon that point he is entitled to the benefit of it. Now, gentlemen of the jury, this is about the contention of the State and the contention of the prisoner, and it is for you to say, it is for the jury to say. It has been argued to you well on both sides, and you have been told of the great magnitude of the issue upon which you are to pass; it is a momentous issue, not only to the prisoner but to the public, and you are to say what the truth of the matter is. The State says that they have made out the case to prove such facts and circumstances that can not be explained upon any reasonable hypothesis consistent with the innocence of the accused. The defendant insists that not a single fact or circumstance has been proved beyond a reasonable doubt that ought to fix guilt upon him, and he argues to you, as I told you in the outset, that his good name and his good character ought to plead for him; that the charge is inconsistent with the character of the man; and I have already told you that while a good character is no excuse for crime, that this is a circumstance, a fit subject for the jury to consider, in passing upon the question of the guilt or innocence of the accused. It is insisted for the prisoner, and admitted, that up to the time of this charge his character was above reproach. His counsel say to you now, that you ought to consider this in passing upon the question of his guilt or innocence; that if a good character is worth anything, if it is worth living for, it ought to avail a man in time of trial.

Now, gentlemen of the jury, as I stated to you, it is purely a question of fact for you to determine. If you are satisfied beyond a reasonable doubt that the prisoner at the Bar committed this great crime, it is your solemn duty to say so; but if, as I have told you, upon the whole case, taking all the facts, all the surroundings, taking the whole case, if your minds are left in painful anxiety and doubt and uncertainty as to the truth of this matter, then the law says the prisoner is entitled to the benefit of this doubt and you ought to acquit him.

D. A. McDOUGALD,
of Laurinburg, N. C.

At the conclusion of Judge McIver's charge the jury retired promptly to the jury room, where they remained in consultation over the matter until about 10 o'clock that night. In the meantime court had been adjourned, the Judge remarking to Sheriff Smith, as he left the court room, that if the jury signified its readiness to render a verdict on or before 10 o'clock to have him summoned from the hotel and he would come over and take the verdict that night. Failing to arrive at a verdict that night the jury retired about 10 o'clock to their quarters in the Hotel LaFayette, and on the following morning at 9:30 o'clock rendered a verdict of "not guilty." Thereupon the prisoner D. A. McDougald was released from custody and restored to his long-sought freedom, amid the joy and gladness of his friends and sympathizers.

The trial from the beginning was indeed a most interesting one, lasting from Wednesday morning, November 18th, to Tuesday, December 1st, 1891, and will doubtless go down

in history as the most celebrated case ever witnessed in the State, surpassing in many respects the famous Ann K. Simpson trial, held in Fayetteville about forty years ago.

Some of the best legal talent in North Carolina was employed on both sides, and people flocked hither from many of the adjoining counties and for many miles in every direction to watch the progress of the proceedings, not a few remaining over in the city throughout the trial.

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